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Primary Elections

A Study of the History and Tendencies of Primary Election Legislation

BY

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TO THE MEMORY OF MY FATHER

PREFACE

The Fathers of the Republic grappled with the problem of establishing a form of government in which the holders of political power should be responsible to the political people, rather than to a king; and in this their labors were crowned with success. In the course of a few generations, however, the political party, unforeseen by the Fathers, grew up and, although an extra-legal body, overshadowed the regularly constituted agencies of government. One of the great problems of the last generation and of our own day is the establishment of a form of party government in which the holders of party power shall be responsible to the voters of the party, rather than to an autocrat or an oligarchy. To secure amenability of party authorities to the party will; to establish a constitutional and democratic government within the party—this is a task at which the American people now labor. There is no more important chapter in the history of democracy than that which deals with the progress and the prospects of this great movement.

The purpose of this volume is to trace the development of the legal regulation of party primaries from 1866 down to 1908, to sum up the general tendencies evident in this movement, to discuss some of the

disputed points in the primary problem, and to state certain conclusions in regard to our nominating machinery. The material employed has been the session laws of the states, the decisions of the courts, publications dealing with the theory or practice of the primary system, newspapers and periodicals, extensive correspondence and interviews with persons who have had special opportunities for judging the primary laws in the different states, and, finally, personal observation of the primary election process in several states.

This volume does not undertake to discuss the application to party primaries of "corrupt-practices" acts, requiring publicity of campaign expenses, forbidding specific types of expenditure, or restricting the amount to be expended. Nor does it attempt to consider all the cases involving judicial control over party nominations or party organization.

The author is indebted to the American Political Science Association for permission to reprint a paper published in the *Annual Proceedings* of 1907 on "Some Disputed Points in Primary Election Legislation;" and also wishes to acknowledge his obligation to all those who have generously aided him in the prosecution of this work.

C. E. M.

August, 1908

TABLE OF CONTENTS

CHAPTER PAGE

I. Early Legislation Regarding Primaries . . 1
- Early Nominating Systems, 1
- Abuses of Convention System, 5
- California Law of 1866, 9
- New York Law of 1866, 11
- Significance of These Laws, 12
- Later Acts to 1880, 13
- Conclusions, 16

II. Primary Regulation, 1880–90 18
- Prohibition of Simpler Types of Force and Fraud in Primaries, 19
- Regulative Plans Optional with Political Parties, 20
- Beginnings of Compulsory Regulation of Primary Procedure, 21
- Summary, 24

III. Primary Legislation, 1890–99. 28
- Influence of Adoption of Australian Ballot on Primary Regulation, 28
- Transition from Optional to Mandatory Laws, 31
- Tendency to Place Primary under Full Legal Control, 33
- The Party Test, 36
- Date of Primary, 39
- Regulation of Convention Procedure, 43
- Appearance of Direct Primaries, 44
- Summary, 46

IV. Regulation of the Convention System, 1899–1908 48
- General Interest in Party Regulation, 48
- General Tendencies, 50

Obligatory Character; State-wide Operation; Fixing of Date; Regulation of Ballot; General Application of Election Safeguards
Southern System, 57
Regulation of Party Gerrymander, 57
Regulation of Conventions, 59
Instructed-Delegate Systems, 61
Election of Party Committees, 64
Summary, 66

V. Direct Primary Legislation, 1899–1908 . . 68
Reasons for New Movement, 68
Preliminaries to Placing Names on Ballot, 73
Majority Required for Nomination, 77
Platform Making, 79
Choice of National Officers, 83
Nomination by Petition Only, 85
Non-Partisan Primary, 87
Summary, 88

VI. Judicial Interpretation of Primary Election Legislation 90
Early Objections to Legal Regulation of Parties, 90
Early Defenses of Right to Regulate, 94
Influence of Australian Ballot Decisions, 96
Defense of Primary Regulation against Doctrine of Natural Rights of Political Parties, 98
Plenary Power of Legislature as Defense, 102
Privileged Position on Ballot as Defense, 103
Classification of Parties, 104
Special Legislation Regarding Primaries, 106
Primary as an Election, 107
Tests of Party Allegiance, 108
Requirement of Fee, 112
Summary, 115

VII. Practical Working of Direct Primary System 117
Size of Vote Cast, 117
Cost of Candidacy, 119

Number of Candidates, 120
Class of Candidates, 121
Pre-Primary Slates, 123
Opinions on Relative Merits of Direct and Indirect Systems, 125
Influence of Press, 127
Direct Primary as a Referendum, 131
Non-Partisan Primaries, 132

VIII. Summary and Conclusions 133
General Tendencies in Primary Legislation, 133
Time of Holding Primaries, 137
Petition Required 140
Style of Ballot, 142
Test of Party Affiliation, 143
Formulation of Platform, 150
Majority Requisite for Nomination, 153
Direct Primary and Federal Elections, 158
Election of Party Officers, 161
Merits of Direct and Indirect System and Nomination by Petition, 163
Legislation Necessary to Supplement Direct Primary, 167
Reduction of Number of Elective Offices, 167
Return to Original Australian Ballot, 171
Merit System, 172
Appropriation for Candidates' Expenses, 174
Conclusions, 175

Appendices 179
A. Reprints of Typical Laws: Illinois, 179; New York, 228; Florida, 255; Wyoming, 262; Iowa (in part), 265; Wisconsin (in part), 269
B. Summary of Present Primary Election Laws, 273
C. Bibliography, 289
D. List of Important Cases on Primary Elections, 296
E. List of Primary Laws Enacted, 1866–1907, 298

Index 303

CHAPTER I

EARLY LEGISLATION REGARDING PRIMARIES

In the early days of the Republic the nominating system, as now known, did not exist. Candidates for local office were presented to the electorate upon their own announcement, upon the indorsement of mass meetings, or upon nomination by informal caucuses,[1] while aspirants for state office were generally named by a "legislative caucus" composed of members of the party in the legislative body, or later by a "mongrel caucus" in which legislators and outside representatives of the party united to select party nominees.[2] In the national field, candidates for president were named by the congressional caucus. After a long struggle the legislative caucus and the congressional caucus were overthrown, and a system of representative party government developed. When the delegate system was adopted, it was regarded as a great triumph for the plain people over the aristocracy. Andrew Jackson had been one of the bitterest antagonists of King Caucus, as the congressional caucus was known, and it was the

[1] See Ostrogorski, *Democracy and the Organization of Political Parties*, II, 1–204.

[2] Dallinger, *Nominations for Elective Office*, chap. i; Luetscher, *Early Political Machinery in the United States*.

Jacksonian Democracy that definitely established the representative party system. By 1840 the delegate convention system had been generally adopted, and entered upon its period of trial. Without interference from the law, the political party was left free to carry on the nominating process in such manner as party tradition, custom, or rules might provide.

This experiment in unregulated representative government of the parties did not begin or continue, however, under wholly favorable auspices. Accompanying the adoption of the new nominating system certain other important political practices were introduced. The Jacksonian Democracy established the doctrine that political offices are the legitimate spoils of the party in power, and may properly be employed to advance the interests of the party organization. The famous principle of rotation in office as a necessary safeguard of free government, and the idea that office should be made elective rather than appointive, when possible, were also generally adopted. At the same time, the application of the new principle of universal suffrage increased the number of those entitled to participate actively in party affairs from a restricted electorate, based upon property and religion, to a constituency including practically all adult white males.[1] Thus the new nominating system entered on its career in a period

[1] See Merriam, *History of American Political Theories*, chaps. ii, iv.

in which the number of voters was increased, the number of offices was increased, and all office was regarded as a party perquisite.

Within a few years, other elements of difficulty were introduced into the problem of successful government. The great influx of population into the United States necessitated the rapid assimilation of various racial elements into the nation, and tended to produce a political situation much more difficult to control than with like numbers of any one of the several races concerned. At the same time, there occurred a rapid concentration of population in the great cities. In 1840, when the nominating system was inaugurated, the percentage of population in cities over 8,000 was 8.52 per cent.; in 1850 it was 12.49; in 1860, 16.13; in 1870, 20.93; in 1880, 22.57; in 1890, 29.20; and in 1900, 33.10. These great centers of population altered the conditions under which American democracy had first developed, and made necessary important adjustments to the new environment. With the growth of cities came new communal needs, requiring governmental action and increasing the number and importance of public positions. Public works, such as street paving, sewers, water systems, and public building were necessitated, while many new public services were required. Departments of public health and safety, education, and charities and corrections were

organized.[1] The same expansion of governmental activity was found in the state and in the national system, where offices and spoils rapidly multiplied. Under such conditions greater and greater prizes were offered for the control of the party machinery.

Moreover, this rapid increase in the number of offices and opportunities occurred under the influence of the theory that offices should be made elective and for short terms only. It was also a prevalent doctrine of this day that political power should be decentralized as far as possible, in state and local affairs. In the absence of centralizing and co-ordinating agencies *within* the government, the party organization began to assume the functions of centralization denied the government. This tended to strengthen the party organization and increase its importance by making it in fact an organ of the government.[2]

Furthermore, following the Civil War there came an era of material prosperity on a scale seldom seen in the life of any nation. The influx of new population, the settlement of the great West, the development of transportation, manufacturing, mining, agriculture and other giant industries, were economic facts that powerfully influenced political life. They tended to divert the attention of the people from the

[1] See John A. Fairlie, *Municipal Administration.*

[2] See Goodnow, *Politics and Administration,* chap. iii, *et passim.*

course of political events, at the very time when intelligent and honest public action was most necessary; and they offered to an unscrupulous party manager unusual opportunities for enrichment. Public rights might be bartered away for private gain, or legitimate private rights attacked in the name of the public.

It was under such conditions as these that the new nominating machinery was compelled to work. Any one or more of these influences might not have interfered seriously with the system, but the combination of all these political and economic forces powerfully stimulated corruption and abuses. Possibly such temptations as were offered in the early days by the spoils system might have been overcome, but the vastly greater allurements under later conditions proved too great to resist. Conditions developed that were so intolerable as to arouse indignation and protest, and led to the formulation of a policy of public regulation and control of the nominating machinery.

The abuses that arose under a system that staked the immense spoils of party victory on the throw of a caucus held without legal regulation of any sort were numerous and varied. They ranged from brutal violence and coarse fraud to the most refined and subtle cunning, and included every method that seemed adapted to the all-important object of secur-

ing the desired majority and controlling the convention.[1]

In the first place, it soon became evident that there was no guaranty that participation in a party caucus or primary would be confined to members of the party immediately concerned. In the rural neighborhoods where general acquaintance acted as a barrier against the intruder, there was less serious difficulty, but in the rapidly growing and shifting population of cities, abuses of this character were exceedingly common. Party primaries were invaded and controlled by men of a different or of no political persuasion, and from other districts of the city. Sometimes this was done peaceably and with a show of decency and order; or again it was accompanied by violence and disorder of the most outrageous character. Both sneaks and sluggers were employed as the occasion dictated. Again, the test for participation in the party councils might be made so stringent as to exclude many bona fide voters of the party, and thus leave the control in the hands of the group managing the machinery, as was done in Tammany Hall.[2] Bribery of voters in an election, although subject to severe penalties under the law, did not con-

[1] See F. W. Dallinger, *Nominations for Elective Office*, pp. 95–126 for specific cases of abuses of this character. See Duncan C. Macmillan, *The Elective Franchise in the United States* (1878), pp. 55 ff.

[2] Bernheim, *Political Science Quarterly*, III, 99.

stitute an offense in a primary or caucus and was not punishable. Voters might be bought and sold with no pretense of concealment, for there was no remedy or penalty at law.

Another device was the manipulation of the count of the votes. Where the issue was determined by a mass-meeting of voters, an autocratic chairman might easily decide the controversy, and from his ruling there was no opportunity for appeal. There was no guaranty that a vote by ballot would be permitted, or if sufficient progress had been made to provide for a written or printed ballot, then the temptation to trickery and fraud was often found irresistible. The ballot-box might be stuffed, the count of the ballots might be falsified, and any one of a hundred ingenious devices might be employed to insure the result desired. Even if otherwise properly conducted, primaries might be held upon wholly insufficient or inadequate notice, so that only the few "interested" would be found in attendance; or if properly called, caucuses might be held in inaccessible places or in rooms wholly inadequate for the number of voters eligible to participate.

In short, the primary election, having become one of the most important steps in the process of government, was open to every abuse that unscrupulous men, dazzled by prospects of almost incredible wealth and dictatorial power, could devise and exe-

cute. Not all of these evils appeared in one place and at one time; but they were likely to occur at any time when factional rivalry became sufficiently intense. Especially were these abuses felt in the great cities where opportunities were largest and rewards most alluring, and where the shifting population rendered personal acquaintance among all the voters impossible.

These evils might have been remedied by action within the party, either by organized effort on the part of those opposed to such practices, or by refusal to support candidates who had been nominated by such methods. Indeed some attempts were made to regulate party affairs from within by means of party rules designed to secure order and regularity in the nomination process. The Republican organization of New York City adopted in 1883 a primary plan intended to eliminate some of the worst evils of the old system.[1] The County Democracy of New York City also adopted a liberal plan.[2] Similar measures were taken by other organizations from time to time.[3]

But these plans were not as a rule effective in operation and no material, or at least no adequate, improvement of conditions was apparent. The appeal of the voters was generally made to the law, and there-

[1] Dallinger, *Nominations for Elective Office*, p. 105.

[2] *Ibid.*, 107.

[3] *Ibid.*, chaps. vii, viii.

fore the progress of primary reform may be traced through the channels of legislation. The growth of primary reform in the South is, however, largely a product of party rules.

The first law was enacted in the State of California on March 26, 1866 (chap. 359), and was entitled "An Act to Protect the Elections of Voluntary Associations and to Punish Frauds Therein." This was closely followed by the New York Act of April 24, 1866 (chap. 783), "An Act to Protect Primary Meetings, Caucuses, and Conventions of Political Parties."[1]

The immediate occasion for the passage of the California law was the desperate struggle between the "long hair" and "short hair" factions of the Union Party.[2] This contest was accompanied by

[1] For illustrations of early methods of controlling the nominating process, see Cortlandt F. Bishop, *History of Elections in the American Colonies*. A notable instance cited is the East Jersey regulation of 1683. Names of all persons eligible to the Great Council were written by the sheriff on pieces of parchment. These pieces were placed in a box and 50 were drawn out by a boy under ten years of age; then 25 were drawn of the 50; the 25 remaining were the nominators and they selected 12 names from the 25 drawn. Before voting the nominators must declare that they would not name anyone "known to them to be guilty for the time, or to have been guilty for a year before, of Adultery, Whoredom, drunkenness, or any such Immorality, or who is insolvent or a Fool." Then three of the twelve were elected by ballot. See I *New Jersey Archives*, 397.

[2] See Davis, *History of Political Conventions in California*, chap. xvii. The *Placerville Mirror* said (July, 1865): "For the

scenes of great violence, disorder, and glaring fraud, especially in San Francisco and Sacramento. The subject of primary reform was not discussed in the platform of either party, but the session of the legislature in 1866 took up the topic and passed what was known as the Porter Bill. The California Act was a purely optional statute, applying only to such political associations or parties as might invoke its protection and subject themselves to its provisions.[1]

In case the law was accepted by any party, then a number of regulations applied to the conduct of its primaries. The law required that the notice of the proposed election of candidates, delegates, or managing committee should state the purpose, time, manner, and conditions of the primary, together with the place or places of holding such elections, and the authority by which the call or notice was published. The call must also name the person to preside over the election, and declare the qualifications of persons to vote at the election, provided such qualifications were not inconsistent with the act itself, which prescribed that no person not a citizen of the United States and a qualified voter of the county should participate in the primary. The law further provided that notice of the primary must be published

last week battalions of blowers and strikers from San Francisco, Sacramento, and San Quentin have been detailed here to operate at the primaries" (p. 214).

[1] Sec. 6.

in some newspaper of the district in which the election was called, and posted in at least three polling precincts at least five days before the election. Additional safeguards were supplied by the requirement that the supervisor of election must be sworn to faithful performance of his duties, and he was authorized to appoint assistants, who must be "reputable citizens" and legally qualified voters. The supervisor was empowered to examine, under oath, all prospective voters and to interrogate them as to their qualifications.[1]

Penalties were provided for offenses against the law. Violation of the oath to conduct the election "correctly and faithfully," or to protect it against all fraud and unfairness, was declared a misdemeanor and made punishable by fine of not less than $50 or more than $200, or imprisonment not to exceed six months, or both. Wilful false statement by a prospective voter under examination by the supervisor was declared to be perjury and punishable as such. Furthermore, voting by one not qualified (if challenged) or double voting was declared a misdemeanor. Finally, the law specifically provided that the expense of such a primary must be borne by the party—"no expense shall be incurred to the county or state in the conduct of elections under its provision."[2]

The New York statute of the same year was man-

[1] Sec. 4. [2] Sec. 7.

datory, but far less comprehensive. It merely provided that anyone who should "by bribery, menace, or other corrupt means or device whatever, either directly or indirectly, attempt to influence any person, delegate, or substitute, entitled under the call of any political party of this state to vote in any primary meeting, caucus, or convention of any such party, in giving his vote or ballot, or deter him in giving the same, or hinder him in the free exercise of the right of suffrage at any such primary meeting, caucus, or convention," should be declared guilty of a misdemeanor, and fined not to exceed five hundred dollars, or imprisoned not to exceed one year.[1]

Neither of these laws contemplated anything like complete public control over party primaries. The California law was wholly optional, and even when adopted provided only for public call of the caucus, for sworn supervision of elections, and for the prevention of illegal voting. The New York law was mandatory in character, but covered only bribery, or intimidation of voters or delegates. Incomplete and inadequate as such provisions were, they marked, nevertheless, an important epoch in the development of political parties. An attempt was being made to place under governmental regulation the procedure of voluntary associations, hitherto practically unknown to the law. These organizations

[1] Acts of 1866, chap. 783.

obtained no special privilege, franchise, or charter from the state, and were recognized in no legal way as public or private corporations, or as parts of the government. It was, moreover, an attempt to accomplish by law what was apparently impossible of execution within the ranks of voluntary association. It was, therefore, a significant step in the evolution of the party system and in the growth of the American government.

The subject of party primaries was an important one at this time. The Union League Club of Philadelphia offered a prize for the best essay on the subject of party nomination.[1] The successful competitor offered a plan by which all candidates should be chosen by direct, plurality vote of the political party, and all such nominations should be made on a fixed day, by all parties, and should be conducted under the same rules and regulations as control the regular election. The direct primary features of this scheme were actually adopted in Crawford County, Pa.,[2] as well as in California, Virginia, and other sections of the country.

In 1871, two states, Ohio and Pennsylvania,

[1] See Dallinger, *op. cit.*, p. 145, and bibliography in Appendix C; *The Nation*, VII, 4, 5; VIII, 86; D. C. Macmillan, *Elective Franchise* (1880) (1st ed., 1878), p. 127, on "The True or Democratic System." This chapter is not in the first edition.

[2] See Hempstead, *Proceedings of the National Municipal League*, 1901, p. 197.

followed the lead of California and New York. The Ohio law[1] was similar to the statute enacted by California. It was, in the first place, optional with the parties. It required public notice of the proposed caucus, specified that the supervisors of elections should be sworn to faithful performance of their duties, and forbade fraudulent voting and bribery. Persons convicted of illegal voting were punishable by a fine of not exceeding $100, "and by imprisonment in the county jail, and to be fed on bread and water only, not less than ten nor more than thirty days."[2] Any attempt to corrupt voters was declared a misdemeanor, punishable by disqualification from voting at primary elections.[3]

In 1875, a similar law was passed in Missouri for counties having a population of over 100,000.[4] The law was optional in its provisions and covered the same field as the California and Ohio Acts. The Pennsylvania act covered elections in Lancaster County only, and merely provided that officers of election should act under oath; that they might administer the oath and inquire into the qualification of intending voters; and contained a prohibition against bribery of voters. The law was made optional, and might be adopted by a vote of the

[1] Acts of 1871, p. 27; amended in 1872, 1874, 1877, 1878, 1879.

[2] Sec. 5. [3] Sec. 6. [4] P. 54.

executive committee, or of the party. It was expressly stipulated that the supervision of primaries should not involve the state or county in any expense. Similar acts passed in 1872 for Crawford and Erie Counties and in 1879 for Beaver County were designed to authorize and legalize the new types of primaries in these counties.

In the Revised Laws of California (1874) additional requirements were inserted.[1] Returns of elections must be made to the secretary of the party committee, and one list must be retained by the judges for at least twenty days. Furthermore, certain provisions of the general election law were extended to primaries, and thus the protection of the general election system was thrown around the party primary.[2] These provisions covered the use of certain forms for poll lists, the challenging of voters, and the canvass of votes. In fact, almost all of the safeguards of the election law were applied to the primaries, except those regulating the form of the ballot and the secrecy of voting.[3] This list also included the prohibition of the peddling of tickets within 100 feet of the polls, the exhibition of a ballot intended for use by a voter within 100 feet of the polls, and

[1] *Political Code of California*, 1872, p. 211; 1874, p. 74.

[2] *Ibid.*, secs. 1357 ff.

[3] Acts of March 26, 1874; Code of 1876 (sec. 1357, note), p. 74, including secs. 1192, 93, 94, 95, 96, and 99.

the use of distinguishing marks on the back or outside of the ballot, or the folding of a ballot in such a way as to indicate its contents.

Thus the California law included practically all of the general election provisions of that day, and outlined a scheme for the protection of nominations almost as complete as that then existing for the protection of the elections. This early statute marked an advanced stage in the development of state control over parties. The act was, however, wholly optional in character, and became effective only upon adoption by a political organization.

These acts were followed by a few scattered statutes. Nevada in 1873 made bribery in caucus or convention a felony.[1] A New Jersey law of 1878 prohibited the participation in primaries of other than legally qualified voters.[2] Another act of the same year provided for the punishment of bribery of delegates.[3]

Down to 1880, then, primary legislation had made but little progress. The state of California alone had a law of a comprehensive character, and this was left optional with the political parties. The Ohio law was likewise optional, and was still less complete, and the Missouri law was both optional

[1] 1873, chap. 121, sec. 90. An Indiana law of 1877 forbade the sale of liquor on election day, and included primary elections.

[2] Chap. 113. [3] Chap. 204.

and local. The New York and New Jersey acts were primarily intended to prohibit only the participation of illegal voters in the primaries. Public regulation of party primaries had barely begun to develop, and was in a rudimentary condition.

CHAPTER II

PRIMARY REGULATION, 1880–90

During the decade 1880–90, the question of the legal regulation of elections occupied the attention of the public in an increasing degree. The attack upon the evils of the party system was successfully directed against the fraud and trickery in the use of the ballot, and resulted in the adoption of the Australian system in modified form. The general discussion of this question tended to fix public attention upon the party system, and to stimulate interest in the nomination as well as the election.

In 1878 Macmillan's volume on *The Elective Franchise* appeared, with its discussion of the frauds and abuses of the primary system; and in the second edition of 1880 the remedy of direct nominations was proposed. Other works were those of Dorman B. Eaton, *The Independent Movement in New York*, in 1880, G. W. Lawton, *American Caucus System*, in 1885, and Albert Stickney, *Democratic Government*, in 1885.[1] The subject of primary reform was also freely discussed in the periodical literature of the time.

Many of the laws enacted during this period con-

[1] See "Bibliography" in Dallinger, *op. cit.*, pp. 221–24; *Proceedings of the National Municipal League* (1894), pp. 341–81.

tained only simple prohibitions of the most evident kinds of fraud in the primaries. Of this character were the laws of the state of Pennsylvania in 1881 and 1883; Connecticut in 1883; New Jersey in 1884; Ohio in 1886; Nebraska, Michigan, and Maine in 1887; South Carolina in 1888; Indiana and Missouri in 1889. These commonwealths attempted the mildest form of regulation. They were satisfied to eliminate, in theory at least, the more objectionable practices in primaries. In Nebraska the law was so tempered as to be optional with cities of the first class having a population of less than 60,000; and in the very rudimentary act of Maine only cities having a population of over 25,000 were disturbed. In fact, the Maine law seemed to give the caucus only the same protection as would be granted to an ecclesiastical assembly. The act provided for the punishment of anyone who "by rude or indecent behavior, or in any way wilfully or unlawfully disturbs or interrupts any public primary, political meeting, or caucus or convention . . . . or creates a disturbance in any hall, walk, or corridor adjacent or leading to the room where such caucus or convention is held."

The Colorado law of 1887 was an improvement over the others in that it specifically enumerated eight different classes of fraud.[1] These were double

[1] P. 347.

voting, folding tickets together, stuffing the ballot-box, advising fraud, impersonating a voter, advising impersonation, bribery, or intimidation, or receiving a bribe. The law also forbade candidates to expend money except for printing, or for the purpose of holding public meetings.

A second class of laws was composed of those modeled after the original California act. Of this optional type were the laws of Kentucky in 1880 and 1882;[1] Maryland 1882 and 1884;[2] Colorado 1883 and 1887;[3] Illinois 1885 and 1889;[4] and Massachusetts in 1888.[5] Even in this group there are limitations to be observed, for the law of Kentucky applied only to certain selected counties;[6] and that of Maryland only to Baltimore. These laws contained provisions requiring notice of the proposed primary, stating the purpose, time, manner, conditions, place, and authority under which held; that election officers should be under oath; made provision against illegal voting; and outlined penalties for failure to comply with the regulations laid down.

The constant tendency, however, was to give in greater detail the procedure to be followed. Thus

[1] Chap. 1018; optional with Bourbon, Campbell, Harrison, and Kenton Counties. The act of 1882, chap. 336, applies to Boone, Greenup, Lewis, Nicholas, and Robertson Counties.

[2] 1882, chap. 290; 1884, 190. [3] 1883, p. 187; 1887, p. 347.

[4] 1885, p. 187; 1889, p. 140.

[5] Chap. 441. [6] 1882, chap. 336.

in the Maryland law of 1884 the hours of voting were specified, and candidates were required to send in their names with a statement of the amount assessed upon them. The qualifications to be required of voters must have been "prescribed and published" by the managing committee of the party calling the election. The party committee must furnish the board of police with a copy of the party resolutions providing for the conduct of the primary, and a copy of the registration lists. The method of voting must be by ballot; ballots must be preserved; and provision was made for count, certificate, and recount. The Illinois law[1] provided for the creation of primary districts by party committeemen, and for full representation of candidates by challengers. It prescribed the size and color of the ballots, and prohibited the use of distinguishing marks on the ballot. Colorado required that the primaries be held under the general election law, so far as contained in a few specified sections, and thus gave the nominating machinery practically the same protection as the general election.[2] This act was repealed, however, in 1885.[3]

More significant than the laws thus far considered was the enactment of statutes containing mandatory provisions that cover the conduct of primaries in some detail. Of this type were the New York law

[1] 1889, p. 140. [2] 1883, p. 187. [3] P. 200.

of 1882[1] (applicable to counties containing a town or city of over 200,000, and not including New York County) and the later law of 1887; the Nevada statute of 1883;[2] the Alabama law of 1886, applying to Mobile County; the Delaware law of 1887, applying to Newcastle County only;[3] the South Carolina law of 1888;[4] and the Maryland act of 1888, applying to the Democratic party in Queen Anne's County[5] and optional with other parties. These laws, although limited in their application to particular parts of the state (except Nevada and South Carolina) made up for their restriction in area by their mandatory character and the detailed nature of their regulations. They constitute a new and advanced type of primary election legislation, and mark the transition from invitation to command.

The New York law of 1887 may be examined particularly with a view of determining the character of these regulations. This law, after requiring due notice of the primary, fixed the hours within which the election must be held; specified that the polling-place should be large enough to hold at least ten electors; required the use of a poll list with a ballot-box in full view of the electors, certification of the

[1] Chap. 154; application extended to New York in 1883, chap. 380, and in 1887, chap. 265.

[2] Chap. 18. [3] Chap. 21. [4] Chap. 9.

[5] Chap. 299; extended to Alleghany Co. (chap. 181).

result of the election, and filing of returns with the governmental authorities. The force of this was broken, however, by the provision that ballot-box, poll list, hours of opening, and oath might be waived, if party rules did not require a ballot; or by the primary itself, except upon protest of five electors.

The Delaware law was also fairly complete in its provisions, and especially so in regard to the count of the ballots and the granting of certificates of election. In fact, the care taken in specifying the manner in which ballots shall be counted, and the requirement that they shall be carefully preserved, is one of the features of the legislation of this period.

The question of party suffrage also became a problem. Aside from gross fraud, which these statutes endeavored to make impossible, there was still a serious question as to what constituted membership in a political organization. Generally this was left to the party itself, with the stipulation that only legal voters should participate. Certain states, however, endeavored to define party allegiance more exactly. Colorado declared that if a voter, when challenged, swears "he is a member bona fide of the party holding such election," his vote must be received.[1] A later statute of 1887 provided that "the question of the good faith of the voter shall be left as a question of fact to the jury." The Maryland re-

[1] 1883, p. 187. See also 1887, p. 347.

quirement was similar.[1] In Illinois it was declared that the voter might be required to state that he had not voted in the primary of another party within one year.[2] The Delaware test of party allegiance read as follows: "You do solemnly swear (or affirm) that you are a legally qualified voter under the rules of party or organization or association authorizing this election."[3] A singular commentary on the state of affairs is the declaration of the New York statute that the party rules must not authorize electors of the opposite party to vote in the primaries.[4]

Another question of increasing importance was the payment of primary expenses. The Maryland laws of 1882 and 1888 declare that no expense shall devolve upon the city by reason of the party primary. The Ohio law of 1886, on the other hand, provides that the regular judges of election shall serve at the primaries, and that they shall be paid two dollars a day from the public funds. But generally speaking, the charges devolved on the organization conducting the primary. The right of the state to regulate the nominating process was recognized, but not the necessity of covering the expense incurred by such requirements.

By 1890, then, it is evident that primary legislation had made substantial progress. Half of the states had

[1] 1888, chap. 299, sec. 6.
[2] 1889, p. 140.
[3] Chap. 21, sec. 8.
[4] 1887, chap. 265.

placed on their statute books laws regulating in various ways the conduct of primary elections. Such states as Delaware, Maryland, Nevada, New York, and South Carolina had enacted mandatory laws governing in some detail the procedure in primaries, although all of these were local in their application with the exception of the laws of Nevada and South Carolina.

California, Illinois, Kentucky, Massachusetts, Missouri, Ohio, and Nebraska possessed optional laws.[1] Of these, the laws of California, Illinois, Massachusetts, and Ohio were general in application, and might be adopted anywhere in the state, while those of Kentucky, Missouri, and Nebraska were only local in scope. The California law was the most complete of these acts, since it provided for the application of practically all of the guaranties of the general election, in case the party chose to adopt the law. The other laws covered about the same points as were found in the acts of states making the regulation of primaries mandatory.

Other states had passed laws forbidding the more obvious kinds of offenses against the purity of elections. Under this head were Colorado, Connecticut, Georgia, Indiana, Maine, Minnesota, Missouri, Michigan, New Jersey, Pennsylvania.[2] Some of

[1] See also Maryland, 1888, chap. 299.

[2] New York had passed a mandatory act of this character.

these laws were very fragmentary, as, for example, the Georgia act which merely forbade the sale of liquor on primary day. The Maine law and the Indiana act were also of minor importance. The other states, however, made a serious effort to prevent or punish flagrant abuses in the course of party nominations. The most stringent laws were those enacted for the benefit of cities where the difficulties of unregulated party rule were most apparent, as in Delaware, Maryland, Minnesota, Nebraska, New York, and Ohio. Practically all of the mandatory acts, complete in character, were directed at the evils appearing in urban communities, while most of the optional laws also were found in states containing important centers of population.

Summing up the characteristic features of this period, it may be said that where the laws were at all complete, they were mainly optional in nature; that where mandatory, they were generally local and special; and hence that the primary was still almost wholly under party control. The appearance of the mandatory and detailed act, even though local in application, was a distinctive feature of this period.

The most important problems of this time were whether the expense of such elections should be made a public or a private charge; what form the test of party allegiance should take and by whom it should

be prescribed; whether the primary should be fully assimilated to a general election and governed by identical laws; whether the primary law should be optional with parties or mandatory in its terms.

CHAPTER III

PRIMARY LEGISLATION, 1890–99

The next period of primary reform covers the decade immediately following the adoption of the Australian ballot, and extends to the date marked by the passage of the regulated convention systems of Illinois, New Jersey, and New York in 1898 and the passage of the mandatory direct primary law in Minnesota in the year 1899. Beginning with the state of Massachusetts in 1888, the Australian ballot system was quickly taken up and soon became the general law throughout the country.[1] The regulation of party primaries also aroused widespread interest, and the orderly conduct of this part of the election machinery attracted almost as much legislative attention as the ballot reform itself.

The motive that led to the adoption of the Australian ballot law was, in general, the desire to prevent bribery, intimidation, and fraud in the conduct of elections. Bribery and intimidation, it was believed, would be made difficult by the enforced secrecy of the ballot, while the possibilities of fraud would be minimized by the legal safeguards thrown around

[1] Wigmore, *The Australian Ballot;* Wisconsin in part in 1887, Kentucky and Massachusetts in 1888.

the election process. The effect of such regulations, it was hoped, would be the reduction of the power of the boss and the facilitation of reform movements.[1] Thus the Australian ballot reform had much in common with primary election reform.

Not only was this true, but the adoption of the new system involved legal consequences of a far-reaching character. The Australian ballot law recognized the political party, and gave it legal standing. Since the government was to print all ballots, there must be a method of determining what names were to appear upon the ballot, and under what party designation; in short a legal definition of a party. Therefore the law provided that nominations for office might be certified by party officers to the proper legal officers, and then be printed as the officially recognized party list of candidates. In order that the ballot might not be cumbered with lists of names presented by relatively unimportant groups of voters, provision was made that such nominations might be made only by parties polling a certain percentage of the total vote, as, for example, 2 per cent. at the last general election. In this way certain political parties and in nearly all cases, only the two leading parties, the Republican and the Democratic, were given what amounted to legal recognition. The leading political parties,

[1] Wigmore, *op. cit.*, pp. 29 ff.; Ivins, *Machine Politics.*

generally against the will of the party chieftains, thus obtained a certain legal status.

When the party was given a legal standing, the way was opened toward regulation of the entire nominating process. The public became familiar with the idea of legislative control of affairs of what had generally been regarded as a voluntary association, and was less reluctant to undertake the labor. Furthermore, a legal way was provided by which the party might be made more readily amenable to regulation. Parties of a certain size, which had been given a privileged position for their nominees upon the ballot were, in return for this privilege, subjected to special restrictions. It was an easy step from permitting the two great parties to have their candidates placed upon the ballot, when certified by the party officials, to requiring that these nominations should have been made only in accordance with such rules and regulations as might be deemed necessary—in short to prescribing in detail regulations governing the entire procedure of party primaries. The party ceased to be a purely voluntary association; and became a recognized part of the nominating machinery.

Primary reform therefore advanced at a rapid rate, and spread over the whole country, with the exception of the South, where party rules carried out the same programme. The most striking

features of this movement will now briefly be passed in review.

It may be observed, in the first place, that the tendency toward *optional* laws, which had marked the beginning of the movement and its early stages, during this period began to wane. A number of states enacted laws of the optional class, but the period of offering party organizations the opportunity for reform was quickly coming to a close.

In the early years of the decade there were a number of such laws, as in Washington and Wyoming in 1890, in Kansas and West Virginia in 1891; in Kentucky in 1892; but this form of regulation became less and less frequent. The tendency was to establish a mandatory minimum of regulation for the entire state, and leave the more advanced features of the new laws, whether optional or mandatory, to the localities. In Massachusetts, for example, a general law covered the state, but additional regulations were made mandatory upon Boston and optional for other cities. In Illinois (1898) a carefully considered law was made mandatory upon Chicago, but was left optional with other counties of the state. In New York (1898) a similar law was made mandatory upon cities of the first and second classes, and left optional with cities of the third and fourth classes, while the rest of the state was covered by certain general regulations only.

There were also some states that endeavored to regulate the nominating process merely by penalizing certain offenses against the purity of primaries. New York, which had begun this attempt in 1866, continued the work; and in 1895 and 1897 added to the list of offenses prescribed at first, though without material changes.[1] Texas, also, forbade a few of the more evident evils;[2] and Iowa[3] and Washington followed in the same path.[4] Of the same general type were the laws of Georgia,[5] Louisiana,[6] Montana,[7] and North Dakota.[8]

Rapid progress was made in the passage of laws, local in scope, and intended to meet the peculiar evils encountered in large cities. Proceeding in this fashion, fairly complete laws were often obtained. In 1891 Missouri cities of over 100,000 were covered; in the same year, Oregon cities of 2,500 and Wisconsin cities of 150,000 were treated in the same manner. In 1892 Maryland passed similar laws for Queen Anne's County; in 1893 Michigan legislated for cities of 15,000 to 150,000 population, and for Wayne County; in 1894 Massachusetts acted for Boston; in 1895 California legislated for cities of the first

[1] Laws of 1895, chap. 721; 1897, chap. 255; 1898, chap. 197.

[2] 1895, chap. 34.

[3] 1898, chap. 111. The Iowa law, however, excepted caucuses from the operation of the act.

[4] 1895, chap. 145. [5] 1891, p. 210.

[6] 1890, p. 62. [7] 1895, I, p. 179. [8] 1890, p. 330.

class; in 1897 Delaware provided for Newcastle County; in 1898 Ohio made like provision for Cincinnati and Hamilton County. Finally the important cities of New York and Chicago were covered by the acts of New York State and Illinois in 1898.

By 1899, then, most of the large cities were placed under the protection of primary laws of varying degrees of severity. Boston, New York, Baltimore, Detroit, Cleveland, Cincinnati, St. Louis, Chicago, and San Francisco, were protected by laws containing legal guaranties for the good conduct of the primaries.

Closer examination of the laws of this period is now necessary in order to show more clearly the character of the advance that was made. The most conspicuous feature of this primary legislation was the gradual approach toward the system employed in general elections. In some states this change was made by general reference to, and adoption of, the regular election law, as far as applicable. This was the case in California (1895)[1] and in Illinois and New York in 1898. In other instances the Australian ballot was adopted, as in Missouri (1891), where a printed ballot was required, and furnished by the government.[2] In Maryland (1892), in Massachusetts

[1] Declared unconstitutional in Marsh *v.* Hanley, 43 *Pac. Rep.* 975.

[2] The Wisconsin law of 1891 (chap. 439) required the county chairman to supply ballots, but permitted the use of other ballots than those fu nished.

(1894), in Michigan (1895), and in Delaware (1897), provision was made for ballots printed by the governmental authorities for the use of the party. In some cases the law required that the voting booths be used, even where an officially printed ballot was not required.

There were, however, certain exceptions to this tendency, notably in the South. In the laws of Kentucky, Georgia, and Mississippi the tendency was to leave far more to the discretion of the party managers than in the North and West. In these cases the policy followed was to leave as large a measure of authority as possible in the hands of the party managing committee. Party officers were authorized to prescribe the qualifications of the voters, to appoint judges of election, to determine how delegates should be chosen, to canvass the vote cast; and in general a broad field of discretion was left them in working out the details of the process.

A step of great importance was the requirement that delegates must be chosen by ballot, or that a vote by ballot might be demanded by a small percentage of those present at the caucus. This made it impossible for a minority to overrule a majority on a *viva voce* vote, and guaranteed a semblance of order and fairness in the proceedings. It prevented carrying a caucus by brute force or strength of lungs. Bribery of voters, fraudulent voting and counting

were not, however, eliminated by this requirement. Yet, in spite of the obvious openings still remaining, the vote by ballot was a decided improvement upon the earlier system, and indicated clearly the tendency to regulate the primary in the same manner as the regular election.

Another feature of the primary laws was the tendency to require that the expense of the primary should be made a public charge. In the early acts this was carefully avoided, and express stipulations were made that no additional expense should devolve upon the public.[1] In the first laws during this period, even, there were cases of this description, as in Missouri (1891), Maryland (1892), Kentucky (1892), and in Mississippi (1892). The Missouri law marked a transition stage, in that it made the primary expense a public charge, but required fees from delegations, in such amount as to cover the cost. For every delegation a fee of $20 was required, and any citizen might become a candidate on payment of $10 for every ward affected. Outside the southern states, however, by the end of the period, the principle had been established that the expense of party primaries like that of general elections was to be paid from the public treasury. In one sense this was unfair to the partisan and the independent, since it required them to contribute toward the ex-

[1] See *ante*, p. 11.

pense of nominations in which they were not directly concerned, or to which they might even be opposed. The controlling purpose of primary reform was, however, the improvement of political conditions in the interest of the whole community, and on this broad ground the propriety of the payment for party primaries by public funds rested.

Another important feature of the primary legislation of this period was the development of a definite test of party allegiance. In the laws first passed the qualifications of primary voters had generally been left to the party itself. It was required that these qualifications should be publicly stated in advance of the primary in the published call, but beyond the minimum guaranty that the voter was a legally qualified elector requirements were seldom made. To some extent this was still done, particularly in the South. But in many of the states the qualifications of the voters were expressed in the law itself in the form of an oath to be required of, or a test to be imposed upon, the intending voter.

Thus the West Virginia law of 1891[1] provided that no one should vote "who is not a known, recognized, heretofore openly declared member of the party included in the terms of the call." In Wisconsin[2] the voter must swear that "he did not vote against

[1] Chap. 67, sec. 4.

[2] 1893, chap. 249, sec. 3.

such regular candidates at such last preceding election." In Minnesota the form of the test required was "that he voted with the political party holding the primary election at the last election; that he intends to vote for and support the nominees of the convention." It was also provided that no one should vote in more than one political party during one calendar year. In Michigan, he must declare "I am a (name of party) and a resident of this ward for the last ten days, and am in sympathy with its aims and objects, and will support its principles and objects." In California the affirmation covered a "bona-fide present intention of supporting the nominees of such political party or organization at the next ensuing election." The California law also contained the requirement that the voter must not have signed a nominating petition before the primary, or sign one after it.[1] In Massachusetts the voter participating in the primaries must be a "member of the political party holding the same, and intend to support its candidates at the polls, at the election next ensuing." A significant provision was the requirement in a Massachusetts law of 1894 that no one was to be debarred from participating in the primary because he had supported an independent candidate. Perhaps the fairest test was that furnished by the

[1] See also local acts, Wyoming, 1891, chap. 32, sec. 5; Michigan, 1895, chap. 411, sec. 9.

New York law of 1898. This required the voter to swear:

> I am in general sympathy with the principles of the ——— party; that it is my intention to support generally at the next election, state or national, the nominees of such party for state or national offices; and that I have not enrolled with or participated in any primary election or convention of any other party since the first day of last year.[1]

Not only were tests of party allegiance prescribed in the law, but provision was made for official registration of party voters. In this movement Kentucky was the pioneer. The law of 1892 provided that at the regular registration, voters might make a declaration of party allegiance.[2] Where registration books were used for regular election purposes, space should be left for a primary registration, in a column headed "Party Affiliation." When the voter registered, he was to be asked "What party do you desire to affiliate with?" In case he desired to make a declaration, his answer was recorded in the proper column. This registration list might be copied by the party committees interested, and the lists might then be used as a basis for the next primary. Persons necessarily absent, ill, or prevented by sickness, death, or other calamity, or who had moved into the city since the last registration, might swear in their votes at the primary. The

[1] 1898, chap. 179, sec. 3. For the year limit, see Massachusetts, 1898, chap. 435; Minnesota, 1895, chap. 276, sec. 5.

[2] Chap. 65, art. xii, sec. 6–10.

persons authorized by the party to copy the lists of registrations from the regular books were required to take oath to discharge their duty faithfully and honestly and penalties were provided for neglect of duty. Where there was no regular registration, such provisions were, of course, inapplicable. No provision was made for a change or transfer of registration.

A similar system was provided by the New York law of 1898.[1] Although similar to the Kentucky law in its main outlines, the New York law differed from it in many important particulars. Provision was made for a special enrolment in December before the custodian of primary records, as well as for a supplemental enrolment on the second Tuesday of March in each district. The New York law, moreover, placed the entire primary process under the control of the regular election officials, and hence gave it a stronger guaranty of fairness.

In the first primary laws passed, no attempt was made to fix the date for holding the primary. The purpose of the law makers was merely to insure publicity in regard to the date selected by the party managers. Thus the original California law required that notice be given at least five days before

[1] Chap. 179, applying to cities of over 5,000; party registration was authorized in the Michigan law of 1895 (chap. 411, local acts).

the primary, and succeeding acts endeavored to establish the same security regarding the time. The later enactments, however, went beyond this point, and in many cases either fixed the date absolutely or established a period within which the primary might be held.

In the Mississippi law of 1892 the requirement was made that primaries must be held between July 1 and September 1 preceding the general election. In the Virginia law of the same year it was prescribed that primaries must be held not more than thirty nor less than twenty days preceding the election. The Massachusetts act of 1894 required that all party primaries be held on one of two consecutive days fixed by the party committee. California in 1895 went a step farther and fixed the second Tuesday in July as a general primary day for all primaries of all parties, and, furthermore, established this day as a legal holiday. Michigan in 1897 made the second Tuesday in July a primary day for general election nominations, and New York in 1898 established the seventh Tuesday before the election as the primary day of all parties. Ohio in 1898 fixed the primary day for Cincinnati and Hamilton Counties as the first Tuesday after the second Wednesday in September.

Not only was a fixed date a feature of the primary laws, but requirements were made that all primaries

of a party, in certain districts at least, should be held on the same day. Wisconsin in 1891 required that all primaries of a party be held simultaneously, but forbade the holding of the primaries of both parties on one day; Mississippi in 1892 provided that the committee in charge of the primaries should designate a uniform day for holding them; Massachusetts in 1894 directed that all of certain primaries of a party should be held on one of two consecutive days, but forbade the holding of the primaries of two parties on the same day.[1]

This uniformity of primary day was a decided advance. It prevented the holding of caucuses long before the convention and in advance of adequate publicity. Where primaries had been held upon a series of days, opportunity was given for the migration of floaters, in case sufficient safeguards against such invasion were not provided. And even where there was no such danger, it intensified the partisan strife which was carried from county to county. Candidates and workers roamed about from one battlefield to another, encompassed by a cloud of corruption and undue influence, and toward the close of a hard-fought battle, the pressure became terrific. The results in many cases were unfortunate, particularly where campaigns were long drawn out and bitterly

[1] See Michigan, 1895, chap. 411; Minnesota, 1895—all of county or city on same day; also 1897—all on same day in state primary or district primary.

contested. The requirement of a uniform primary day helped to eliminate many of those evils and gave an opportunity for the choice of delegates under more favorable circumstances.

An important phase of the primary movement was the regulation of party committees. From the first, the laws had referred to and recognized party committees as essential parts of the nominating process. Their duties in relation to the call of the primary, its conduct and supervision, and the canvass of the vote, had been outlined in more or less detail. But it was assumed that such a committee had come into existence by methods wholly of party creation, and was outside the pale of the law. In the later acts, however, regulation of the choice of committeemen began. The Wisconsin law of 1891 provided that at the time when candidates for county office were chosen, committeemen in wards or townships should be chosen, "by acclamation or otherwise."[1] Mississippi in 1892 required that the county executive committee, on petition of one-fifth of the party electors of the county, should be chosen in the party primary, and that there should be thirteen members of this committee, two for each supervisor's district, and three at large. Massachusetts in 1894 and New York in 1898 made provision for the election of various party committees in the party primary.

[1] 1891, chap. 439, sec. 27.

Thus it is seen that the committee, which was at first given plenary power with respect to the adoption of primary laws and later was given certain duties in regard to laws that were no longer optional, was finally itself brought within the same circle of regulation that covered the conduct of the primary. In fact, duties of so fundamental a nature devolved upon the committees under the new laws that it became more important than ever that the election of these committees should be carefully safeguarded, and their responsibility to the majority of the party definitely ascertained.

To some extent the regulation of conventions was also undertaken. Proxies were forbidden in North Dakota in 1890 to non-residents of the district from which the delegates were sent. In numerous other states the use of proxies was forbidden, as in Wisconsin in 1893, in Michigan and Minnesota in 1895, and in California in 1897.[1]

There were also other regulations regarding the convention. The time of holding the convention was limited in the California law of 1897 to some date within seven days of the primary. In Massachusetts (1896) a municipal caucus must be held not earlier than four days after a primary. A Massachusetts statute provided that candidates must be nominated upon roll-call in conventions (except state), on

[1] One proxy was permitted.

motion of one-fourth of the delegates present.[1] New York (1898) specified by whom the convention should be called to order; and that the temporary chairman should be chosen by roll-call. Similar provisions were contained in the Illinois law of 1898. These attempts indicate the difficulties experienced in securing fair and orderly conventions, even after the primaries had been carefully protected.

In some cases regulations were made regarding the apportionment of delegates to districts. In Mississippi each county was declared entitled to twice as many delegates as it had representatives in the house of representatives; California in 1895 fixed the ratio of delegates to the party vote at 1 to 200; while New York (1898) required that the delegates be as nearly as possible equally apportioned according to the party vote at the preceding general election. In general, however, the method of districting was left to the party authorities to determine in their discretion.

Although the mandatory direct primary did not develop during this period, there were instances where it appeared in an optional form. The Kentucky law of 1892 provided for an optional direct primary for all candidates, leaving the details of the plan to be worked out by the party committees. The Mississippi law of the same year also made

[1] 1897, chap. 530, sec. 23.

provision for a direct vote upon candidates, but this law was inoperative because of insufficient penalties. If such a primary were held, it was required that candidates for legislative, county, or county district office, should be chosen by majority vote, unless all of the candidates had previously agreed upon choice by a plurality. In case a majority was not obtained by any one candidate, then a second primary must be held between the two candidates receiving the highest votes. Virginia in 1894[1] also provided for an optional direct primary for Richmond and Norfolk. The Massachusetts law of 1894 contained a few provisions for a direct primary. The Delaware law, applying to Newcastle County only, made provision either for choice of candidates or of delegates.[2] The Ohio law (applicable to Cincinnati and Hamilton Counties) made the direct primary optional; in fact, it provided that the direct system should be used in the absence of any decision to the contrary by the party committee.[3]

In many other places, especially in the South and West, the direct primary was adopted by voluntary act of the party, and became the recognized method of nomination. In Ohio, Indiana, Iowa, Kansas, and in the Carolinas, Tennessee and other southern states the movement made rapid progress. The legal establishment of the direct nominating system dates,

[1] 1894, chaps. 354, 741. [2] 1897, chap. 21. [3] 1898, p. 652.

however, from the end of this period, and will be discussed more fully in a later chapter.

By the close of this period, two-thirds of the states had enacted primary laws of one kind and another, and these laws were about equally distributed among the several sections of the country. No state had yet passed, however, a mandatory act, placing the primary on the same plane as the election and making it uniformly applicable throughout the commonwealth. Most of the laws in force were still either optional, or, where mandatory, were either local or aimed only to regulate a few of the more evident abuses of the primary. None of the southern states possessed a complete law of any type with the exception of Kentucky and Missouri, and the far western states were equally backward. Massachusetts, Maryland and New York of the northeastern group, Ohio, Illinois, Michigan, Minnesota, and Wisconsin of the central group, had fairly complete laws, applicable, however, only to particular localities.

The characteristic feature of the legislation of this period was the legal regulation of the party primary, by mandatory act, particularly in the great cities like New York, Chicago, and Boston. The general tendency was to surround the primary with practically all of the new-found guaranties of the regular election. The optional law and the half-way regulation still survived and new types appeared,

but the drift of legislation was plainly away from such forms of control and toward complete and effective regulation. These types of rigid regulation were, however, generally local in character, and applied only to particular cities or counties where primary evils were especially acute. Yet every indication pointed toward thoroughgoing regulation. The expense of the primaries tended to become a public rather than a private charge; the qualifications for party suffrage were outlined in increasing detail; the guaranties of the regular election were more and more approximated; in some cases systems of party registration were provided; the date of primaries and conventions was fixed in several acts and the procedure of conventions was prescribed by law; the laws began to cover the election of party officials. In the background appeared the movement for the direct primary, already widely developed in voluntary form in numerous states of the South and West. In spite of many laws that were passed in imperfect form as a result of compromise and concession, in spite of the nullification in whole or in part of many otherwise effective laws, the process of primary elections was rapidly being covered by a network of public regulation. The opposition of certain interested politicians only served to inflame public opinion to a higher degree, and ensured the victory of the regulative idea.

CHAPTER IV

REGULATION OF THE CONVENTION SYSTEM, 1899–1908

The period from 1899 down to the present has been one of remarkable activity in the field of primary legislation. In every section of the country this is evident. Every state in the Union enacted a primary law of some sort, while Massachusetts and New York made an annual contribution, and several other states as frequently as the legislature convened. California,[1] Alabama,[2] Virginia,[3] and Oklahoma[4] established the new system of constitutional provisions authorizing the enactment of primary laws. Widespread disgust with political methods and results, coming as a result of numerous investigations and exposures, prompted a sweeping policy of legal regulation and control of political parties.

In the annual conferences of the National Municipal League, especially in 1904 and 1905, the question was thoroughly discussed and a draft of a municipal nominating law prepared; in 1905 a conference on primary reform was held under the auspices of the

[1] 1900, art. 2. [2] 1902, art. 8. [3] 1902, art. 2.

[4] Oklahoma, 1907, art. 3. Mississippi, 1890, Art. 12, and Louisiana, 1898, art. 200, had already made such provision in their constitutions.

Michigan Political Science Association at Detroit; in 1906 the "United Cities Conference" held in Chicago upon invitation of the Municipal Voters' League of that city discussed the same subject; a national conference was held in New York in 1907, and in the same year the American Political Science Association discussed the topic of primary reform.

Some systematic literature on the primary question began to appear about this time. Frederick W. Dallinger in 1897 in his *Nominations for Elective Office in the United States*, considered the abuses of the convention system. In 1899, Walter T. Branson discussed "Tendencies in Primary Legislation," in the *Annals of the American Academy of Political Social Science.* In 1902 E. C. Meyer published his *Nominating Systems*, in advocacy of the adoption of the direct primary. Important discussions of the political party were made by Ostrogorski in his *Democracy and the Organization of Political Parties;* by Macy in his *Party Organization* and by Woodburn in his *American Political Parties.*[1]

[1] See Nearing and Trowbridge, "Political Organization and Primary Legislation in Pennsylvania," *Proceedings National Municipal League* (1905), p. 293; H. E. Deming, "Political Organization and Primary Legislation in New York," *ibid.*, p. 309; Cheney and Simpson, "Political Organization and Primary Legislation in Minnesota," *ibid.*, 1906, p. 327; Clarence B. Lester, "Primary Legislation and Present Organization in Wisconsin," *ibid.*, p. 329; *Proceedings of American Political Science Association* (1907), pp. 175–89.

The most striking features of the legislation of this period were, in the first place, the tendency to apply as nearly as possible the laws governing regular elections to the conduct of primaries; and, in the second place, the tendency to substitute nomination by direct vote for the indirect convention system. The movement in the direction of complete legal regulation of the primary will first be considered, and the direct nomination movement in the following chapter.

Generally speaking, the regulating acts were made compulsory and were state-wide in their operation. A definite date was frequently fixed for holding all primaries of both parties; the ballot was placed under full official protection, and the election boards as well; elaborate provisions were made for safeguarding the process throughout; and very frequently a blanket clause declaring all provisions of the regular election law applicable was included in the primary act. In short, the caucus was transformed into an election.

Looking more closely at the details of this regulative process, we find that the bulk of the laws passed were obligatory in character. The optional features characteristic of the early acts were found in a few cases, as in the Utah law of 1899, the Montana and Oklahoma laws of 1905, and in certain features of the Michigan act of 1905. In many cases the option

of nominating candidates either by direct vote or by the delegate system was offered, but the privilege of choosing between regulation and no regulation was rarely extended. The public was no longer satisfied to suggest timidly the desirability of primary regulation, but now boldly demanded binding laws.

In the next place, it is seen that many of the laws enacted were general in nature, instead of being restricted to a particular city or county. This is by no means true of all the statutes, but the tendency is unmistakable. The political abuses aimed at were earliest evident in the great cities, but the demand for regulation became eventually almost as strong in the rural districts as in the urban communities.

The Minnesota act of 1901, the Mississippi law of 1902, the Wisconsin statute of 1903, the Oregon law of 1904, were among the first of the state-wide, mandatory laws, but latterly almost all statutes are general in their provisions and except no part of the state from their operation. The Pennsylvania, Louisiana, and Illinois laws of 1906, for example, are applicable uniformly throughout the state, although such cities as Philadelphia, New Orleans, and Chicago are included in the scope of the several acts. It is true that in many states, primary laws are still local in their application, and in others there are two sets of laws, one for the city and the other

for the country; in fact, the general election law itself is often widely different within the same state, especially in the provisions respecting registration of voters. The general tendency of primary legislation, however, is now strongly toward uniform legislation for the entire state. It is no longer an unusually good or an unusually bad community that asks for local relief, but a general state-wide sentiment that compels the enactment of primary regulations for the entire commonwealth.

A further evidence of the tendency to imitate the general election in many recent laws is found in the legislative determination of the date upon which the primary shall be held. Originally, it was deemed sufficient to require that notice of the primary be given to all those concerned. The next step was to fix the limits within which the primary should be held, as, for example, that the primary must take place not less than forty nor more than sixty days before the election. Even this option is taken away in most of the later acts, and a definite date for the holding of the primary is established by the law. The most usual dates are in August or September. In the most recent acts this date is not only the same for both parties, but the primaries of both parties must be held in the same place. This virtually establishes a new election day—a primary or preliminary election day in preparation for the final election

day.[1] In some states, however, it is forbidden to hold the primaries of both parties on the same day, as in Rhode Island, Florida, and Idaho. In most of the commonwealths the date of the primary is still left with the party authorities, subject to the requirement that ample notice be given the party voters, and that the primary be held a certain time before the election.[2]

The tendency to follow the regular election law is also seen in the regulations respecting the ballot. In general, the laws of this period require the application of the Australian ballot system to the primary election, although this is not true in all cases. Such laws as those of Minnesota (1899), Maryland (1902), New Jersey (1903), Wisconsin (1903), Montana (1905), North Dakota (1905), and Pennsylvania (1906), and other more recent acts, provide for the printing of ballots by public authorities, state or local, and for secrecy of the vote. In other cases, secrecy of the ballot is provided, but the printing of the ticket is left to the party authorities under certain regulations, as in New York, where the

[1] Such is the law in Wisconsin, Minnesota, New Jersey, Iowa, Arizona, Illinois, South Dakota, North Dakota, Pennsylvania, Massachusetts (Boston), Kansas, Oklahoma, Nebraska, Washington.

[2] In Maryland (1902) the date is fixed by agreement between parties; in Arizona (1905) the city councils or boards of supervisors fix the date.

ballot paper is supplied by the government, and the printing left to whom it may concern. In other states the size and color of the ballot is determined by law and the printing is left to the party committees, as in Texas (1903), Vermont (1904), and Indiana (1905). The Louisiana law of 1906 provided that ballots for state offices should be supplied by the state government, but that ballots for local offices should be furnished by the parties. In Illinois (1906) the law required that the government print and supply ballots containing names of candidates, while in the case of the ballots containing names of delegates to conventions, the ballot paper was to be supplied by the government but printed by anyone interested.

It may be said that the overwhelming tendency during this period was to require preparation and distribution of the ballot by public authorities rather than by private individuals. This is particularly characteristic of laws providing for direct nominations. Where the delegate system is retained, public printing of the ballots is not so likely to be required, and generally in the southern states the regulation of the ballot is in the hands of party committees.

At numerous other points the increasing resemblance of the primary to the regular election is apparent. The choice of election officers, originally a party matter, is in this latest period legally regulated. The

judges or inspectors of elections are generally taken from the list of regular election officers, receive the same compensation, and are subject to the same pains and penalties for the violation of the law. In the same spirit of determination to secure fair play in the primary, full and detailed regulations are made to cover the orderly conduct of the election, the accurate count of the votes, the safe return of the result, the proper certification of delegates, and to guarantee the right to a recount where a prima facie case is made out by the complainant. This tendency toward detailed regulation is much less pronounced in the southern states than in the North, although it is increasingly evident even there.

Finally, in many laws there appears a blanket clause applying to the conduct of the primary all general election laws, unless otherwise provided in the act. To some extent this had been done in the preceding period, but it now becomes a strongly marked tendency, evident in nearly all of the very recent acts, such as those of Wisconsin (1903), Michigan (1905), Pennsylvania (1906), and Illinois (1906).[1]

The Wisconsin act which is typical, declares that—

> The provisions of the statutes now in force in relation to the holding of elections, the solicitation of voters at the polls, the

[1] In the Minnesota act of 1899 numerous specific sections of the law are referred to; also in the Iowa law of 1904.

challenging of voters, the manner of conducting elections, of counting the ballots and making return thereof, and all other kindred subjects, shall apply to all primaries in so far as they are consistent with this act, the intent of this act being to place the primary under the regulation and protection of the laws now in force as to elections.[1]

The Michigan law of 1905 declares that—

Primary elections shall, except as herein otherwise provided, be conducted and regulated as near as may be in every particular, as prescribed by law for the regulation and conduct of general elections.[2]

In Pennsylvania is it provided that—

Primaries shall be conducted in conformity with the laws governing the conduct of general elections, in so far as the same are not modified by the provisions of this act or are not inconsistent with its terms.[3]

The important exception to this general tendency is found in the southern states, where much of the responsibility for the fair conduct of elections is placed with the party committees. In this section of the country there is practically but one party, few great cities are found, the industrial and labor situation is less acute than in the North, and the prizes of political success are less attractive. Under such conditions, the need for minute regulation of the details of the nominating process has been less keenly felt than in the North.

[1] Chap. 451, sec. 25.

[2] Chap. 181.

[3] Chap. 10.

Many of the southern primary systems were originally and still are voluntary in character, and it seems necessary only to prevent the more obvious forms of violence and fraud. Hence the laws are frequently optional; the date of the primary is fixed by the party committee; the ballots are printed and supplied by the party; the election officials are appointed by the party, and returns are made to party officers, who may also conduct the recount. The expense of the election is also generally a party expense instead of a public charge, as is elsewhere the case. Even in the South, however, the tendency to follow the analogy of the general election is apparent, as in the recent laws of Louisiana (1906) and Texas (1907), and in the increasingly detailed regulations prescribed in other states.[1] It is probable that within a few years the tendency toward complete legal regulation of the primary process will have swept over the southern states.

Although the district or unit of representation is an important element in the convention system, there has been but little legislation regarding it. Where the unit is made the precinct, there is comparatively little possibility of a gerrymander in the interest of any faction seeking to obtain or continue

[1] See Mississippi, 1908, chap. 136, authorizing a contestant to petition the secretary of the party committee and requiring the committee to assemble and consider the case, and granting the committee power to subpoena witnesses.

party control except when new precincts are created. Where delegate districts are made by the party, however, there is a great temptation to adjust the boundary lines in favor of the faction in power, and hence the party gerrymander is a familiar phenomenon.[1] The principles, methods, and results of this plan are the same within the party as in the field of legislative representation. The purpose is to obtain the maximum number of delegates with the minimum of votes. The method is the careful drawing of district lines. Not infrequently, the result is to place a minority of the party in control of a majority of the delegates and to make revolution exceedingly difficult, even when the majority of the party is seditiously inclined. The process may also be employed to create comfortable districts for the favored ones and correspondingly uncomfortable ones for the hostile. In state conventions where the county is generally the unit, no little difficulty arises from this practice. As the control of the county usually carries with it a solid delegation, the possibilities of the gerrymander are evident. For example, 800 voters may control 1,200, and may send to the state convention a delegation favoring the minority faction. This process, repeated in a number of counties throughout a state, may easily

[1] In Mississippi (1892): "It shall be unlawful for any executive committee to . . . . gerrymander a county so as to defeat the will of a majority."

result in the complete demoralization of the majority system. In only a few instances has this practice been attacked. In some states, as California, Missouri, and Illinois, the duty of creating primary districts has been delegated to the election officials. But even in such cases, the election officers generally follow the recommendation of the party committeemen, and the result, while perhaps better than before, is still far from satisfactory. The apportionment will be favorable to the faction in power. In a number of states the ratio of representation has been fixed in the law, at so many party votes per delegate. In New Jersey[1] the number of delegates is placed at one for every 200 party votes and major fraction, with the provision that each district shall be entitled to at least one delegate. As a further precaution it is provided that this apportionment shall be subject to judicial review on complaint. Montana required (1905) that delegates must be distributed according to party strength, and similar provision is made in other states.[2]

The regulating tendency has extended the field of its operation to the activity of the convention itself. It has been learned by bitter experience that the will of the party may be thwarted by an arbitrary chair-

[1] 1903, chap. 248, sec. 7.

[2] See Missouri, 1901. South Dakota (1905) gave each county one delegate for each 50 votes—except in county conventions; Texas (1903) one for each 300 votes.

man or arbitrary rules, and that the action of the delegates must be safeguarded as carefully as the preliminary part of the nominating process. A convention of a thousand or more delegates offers great temptations to an autocrat, and many a hard-won primary battle has been lost in a turbulent convention.[1] The scope of such legislative regulation includes provisions regarding the date of the convention, verification of credentials, and convention procedure.

The date of the convention has been regulated in a number of instances. In Texas the fourth Saturday in August is made the time for the district convention to frame the platform; in Iowa (1904) the fourth Saturday after the first Tuesday in May. In Illinois the act of 1905 fixed the convention date at some time between May 1 and May 15, and the law of 1906, definitely prescribed the day of holding the convention for all political parties. Attention has already been directed to the prohibition of the use of proxies in conventions during the preceding period. This tendency has recently been further exemplified.[2] Additional provisions have been made regarding the granting of credentials to delegates and the determination of questions arising in regard to the

[1] See Robert M. La Follette, *Primary Elections.*

[2] See Michigan, 1901, chap. 470; Idaho, 1903, p. 360; Ohio, 1904, p. 439; Texas, 1905, chap. 11

legality of credentials. In Missouri (1901) judicial review was allowed in case of neglect of duty by party officers, whether in the primary or in the conventions. In Colorado, on the other hand, the state central committee has power to decide all party controversies, subject to the rules of the convention. Such decisions are final and not subject to judicial revision.

In other cases, regulations are made regarding the call of the convention to order;[1] that the hall shall have seating capacity sufficient for the delegates; that officers shall be elected by a roll-call; that nominations shall be made only by a roll-call.[2] The New York and Illinois (1898) provisions upon this point are as comprehensive as any. In North Dakota (1905) the law went still farther and provided that nominations should be made in all cases by secret ballot and forbade the use of the unit rule in the county delegations.[3] The Texas law of 1905 provided that the lowest candidate on any ballot should be dropped, and the process continued until a nomination was effected.

The instruction of delegates to vote for certain candidates has been recognized in recent laws

[1] See Missouri, 1901, p. 149; Michigan, 1901, chap. 470; Texas, 1905, chap. 11.

[2] New York Election Law, 1898, 179, sec. 10.

[3] Chap. 109, sec. 8.

endeavoring to combine the delegate and direct nominating systems. Thus the Iowa law of 1904 required delegates to vote in convention as instructed by their districts. The law read

> All delegates chosen and serving as such in convention assembled shall be considered as instructed to vote for, as long as good faith requires, and to use their best endeavors to secure the nomination of persons for the various positions to be filled, who have received the largest number of votes respectively in the precinct wherein the delegate was elected.[1]

In fact a half-way form of direct primary developed in a number of states with the last decade, notably in the case of Iowa and Illinois. This system grew out of the long-established custom of instructing delegates to vote for certain candidates. Thus A, B, and C might be elected as delegates, instructed to vote for X as governor. These instructions had no legal force, but were generally regarded as binding upon the delegate elected. The deliberate violation of an instruction, although by no means a usual occurrence, was not unknown to the political world. Consequently provision was made in some states that votes cast for candidates should be returned officially and counted, and that delegates from that district, whoever they might be, should be legally instructed to vote for the candidate receiving the largest number of votes in the district at the primary.

[1] Chap. 40.

The Iowa law (1904) provided for the printing of the names of candidates as well as of delegates on the ballot, and that delegates should be considered as instructed to vote for the candidate receiving the highest number of votes.

The Illinois law of 1905 made similar provision. Under the term of this act, the candidate for governor who received the largest number of votes in the county was to have the delegates from that county to the state convention, for the first ballot at least. This was also true of the candidates for Congress or for the state legislature.[1] The Illinois law of 1906 made similar provision in regard to state, congressional, and senatorial conventions. A vote was allowed upon other officers, but this was wholly advisory, and delegates were not bound to support the candidates receiving the highest vote.

The purpose of this system is to preserve the advantage of the convention, and at the same time to permit a direct vote on candidates, within the delegate district. It may easily result, however, in nomination by a minority against the vote of the majority, or of a candidate receiving only a relatively

[1] In Cook County the delegate district was made the unit of representation. The New Jersey law of 1903 permits the grouping of delegates and printing opposite the group the name of the choice of this group for any office. Delegates are not bound by such instructions, however.

small percentage of the vote cast. Under the Illinois law of 1906, several minority candidates received a majority of delegates and were nominated.

A conspicuous feature of the most recent primary legislation is the regulation of the party committee.[1] Originally this organ of the party was given the option as to whether there should be a law at all, and was intrusted with the application of the statute in case its provisions were adopted. Latterly, however, not only has the law been made compulsory in its character, but the committee itself has been the subject of legislation. The mode of election, structure, and powers of the party officers have become a favorite field for legislators. About half of the states during the last decade have found occasion to undertake legislation of this nature. This invasion of the province of party organization has gone quietly on, until it seems likely that within another ten years the entire domain of the party will be placed under legal regulation and control.

Generally such statutes provide for the structure of the committee, its term of office, and the mode of its election. Thus the Mississippi law prescribes a county committee of fifteen, and a state committee of three from each congressional district. The Wisconsin law of 1903 requires that a state central com-

[1] On these committees as constituted heretofore, see my article on "State Central Committees," *Political Science Quarterly* (1904).

mittee of at least two for each congressional district shall be selected. Massachusetts (1902) requires at least one for each senatorial district; Louisiana (1906) requires one for each parish, one from each ward or parish of New Orleans, and three at large from each congressional district. The term of the committeemen is also fixed at from one to four years. The mode of election is also frequently determined. In many cases the law requires that party committeemen be elected by the party voters at the primary, although in others the delegate method is preserved.

In general the powers and duties of committees are not considered, except so far as they concern the nominating process. The Louisiana law of 1906, however, confers extraordinary authority upon the committees. They are not only empowered to make rules for their own government, but "shall direct and order how all subordinate or local committees shall be organized and constituted, fix their number, regulate their term of office, and the time of their election." The Colorado act of 1901 gives the state central committee power to decide all party controversies, and makes such decisions final.[1] The North Dakota law[2] explicitly states that each and all of the state, county, and other committees

[1] Chap. 71.

[2] 1905, chap. 109, sec. 37. See South Dakota, 1905, chap. 107, sec. 28; cf. Montana, 1905, chap. 99.

shall possess "all of the ordinary powers and authority heretofore established by the usages and customs of such parties not inconsistent with any of the provisions hereof."

As a result of the forty years' movement toward legal regulation of party primaries, every state in the Union has now legislated against the abuses arising under the voluntary party system of nomination. Certain advanced laws in Colorado and Montana have been repealed, but, generally speaking, no state takes a backward step in primary regulation.

About one-half of the commonwealths have laws that are state-wide in their operation, mandatory in character, and fairly complete in their provisions. This list includes Arizona, Iowa, Illinois, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Mississippi, Nebraska, New Jersey, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Texas, Washington, and Wisconsin.

In another group of states there are mandatory laws, fairly complete, but local in their application. This includes California, Delaware, Indiana, Maryland, New York, and Rhode Island.

A third group of states still retains laws of the original optional type. Among these are Alabama, Arkansas, Florida, Kentucky, Tennessee, West Virginia, and Wyoming.

And finally there is a group of states having laws that cover only a few of the more flagrant offenses against the orderly and honest conduct of primaries. This covers Connecticut, Georgia, Idaho, Maine, Montana, Nevada, New Hampshire, North Carolina, South Carolina, Utah, Vermont, and Virginia.

Some states properly fall under more than one group, as New York and Massachusetts, which have one law for the city and another for the county. A more adequate characterization of the several systems is found in Appendix B.

In general it may be said that the project of primary regulation is fairly well carried out, except in the Rocky Mountain states, New England (excluding Massachusetts), and the South, while the most advanced position has been taken by the Central group and particularly by the Mississippi Valley states.

CHAPTER V

DIRECT PRIMARY LEGISLATION (1899–1908)

The legal regulation of the convention system, however thoroughgoing and complete in its provisions, was unable to meet the demand for popular control of the party system. Despite the fact that in many cases the primary had been surrounded by practically all of the safeguards of an ordinary election, the public remained unsatisfied. Advancing even more rapidly than the movement for legal regulation of the nominating process, came the attack upon the convention system and the demand for nomination by direct vote of the party. Direct nomination, however, was by no means original with this period, but was already a generation old. Pennsylvania had experimented with various forms of it in the 60's,[1] and for many years it had been in use throughout the southern and western states. Here it had flourished without legal protection, except such as was involved in the recognition of nomination so made as

[1] See Hempstead, "The Crawford County or Direct Primary System," *Proceedings National Municipal League* (1901), pp. 197–217; C. R. Woodruff, *Conference on Practical Reform of Primary Elections* (1898), pp. 51–56; *Proceedings of Michigan Political Science Association* (1905), especially pp. 3–72; and the bibliography in Appendix C of this volume.

legal nominations, which might properly be placed upon the official ballot when certified by the party authorities. This direct system was now demanded as a compulsory method of nominating candidates. None of the early enthusiasm for legal regulation of primaries was abated, but to this there was added the demand for the abolition of the indirect nominating process.

The movement was in part a democratic one, and was animated by a desire for wider popular participation in government. In this sense it was a part of a broad tendency in the direction of popular control over all the agencies of politics. The referendum, the initiative, the recall, and the direct primary are organic parts of a general growth of democratic sentiment, demanding methods by which more direct responsibility of the governor to the governed can be secured.

In the second place, the demand for the direct primary grew out of the general discontent regarding social and industrial conditions. The party system was regarded as an important element in these conditions, and popular opposition converged upon the convention as the source of much of the evil it was desired to eliminate. Startling disclosures respecting the betrayal of public trust by party leaders aroused the people to a crusade for responsible party government.

In the last ten years about two-thirds of the states have enacted direct primary laws of varying types. Some of these laws have been obligatory and others optional; some have been general in application and others merely local.

In 1901 Florida, Oregon, and Minnesota enacted important direct primary laws; in 1902 Mississippi followed; and in 1903 the first state-wide primary law with fairly complete provisions for legal supervision was enacted by the state of Wisconsin. In 1904 a similar act was passed by Oregon and an optional law by Alabama. In 1905 Illinois, Michigan, Montana, South Dakota, and Texas followed with more or less complete laws. In 1906 Louisiana and Pennsylvania followed; in 1907, Iowa, Nebraska, Missouri, North Dakota, South Dakota and Washington placed very complete laws upon their statute books; and in 1908 Illinois, Kansas, Oklahoma, and Ohio were added to the list.[1]

The movement for direct nominations has generally begun, as in the case of the other type of primary law, with an optional or mandatory law for a particular locality; has then extended to a larger number of offices over a broader area; and has finally become mandatory instead of optional in its terms and state-wide instead of local. Thus the Minnesota law was

[1] Numerous local laws were passed in the various states during this time.

at first (1899) applicable to Hennepin County only, but was later extended over the entire state (1901). The Michigan law began with experiments in Kent County, and later was applied to the whole of Michigan in 1905. Nebraska in 1905 enacted a law covering cities of 125,000 population[1] and in 1907 this was superseded by a state-wide law.[2] Missouri made direct primaries optional for cities of 300,000 in 1901,[3] and covered the state in 1907.[4] Massachusetts also offers an interesting evolution of this type, although that state has not yet accepted a general direct primary law.

So rapid was the progress of public opinion and of legislation that in many instances a compromise law of one session of the legislature was followed by a thoroughgoing law in the next. For example, the North Dakota law of 1905 authorized direct primaries for all district nominations, but did not include state offices; but in 1907, a sweeping act was passed covering practically all offices. South Dakota, in 1905, provided for a state-regulated primary, and left the direct primary optional in case of county offices and the state legislature, but in 1907 a comprehensive act was obtained from the law-makers. The successive acts of Texas in 1903, 1905, and 1907 show similar rapid progress.

Illinois affords an even better illustration. In

[1] Chap. 66. [2] Chap. 52. [3] P. 144. [4] P. 263.

1898 a legally regulated primary was provided for Cook County, and was left optional for other counties of the state. In 1905 a state-wide, legally regulated primary system was adopted, and in this law provision was made for an advisory vote on governor, and for direct nomination of county officers outside of Cook County. This act was declared unconstitutional, however, and the legislature provided a system in 1906 which permitted an advisory vote on practically all officers, and required that the delegates to state, congressional, and senatorial conventions should support the candidate receiving the highest vote in their delegate district. In no case, however, was direct nomination secured. This act was also declared unconstitutional, and finally in 1908 the legislature passed a mandatory direct-plurality nomination law, covering practically all officers. These laws are cited to show how swift was the advance of public sentiment during this period, and how little disposition there was to accept anything short of a complete direct nomination system.

The direct primary laws differ widely in the degree of legal protection afforded. In the southern states the rules and regulations governing the primary and their administration are left largely to the party itself, acting through its official committee. Indeed, in many of the southern states, as in Arkansas, Georgia, and Virginia, direct primaries have been

adopted by the party without any legislation, and are still conducted wholly under party law. Even where regulations are prescribed by the legislature, they are generally rather meager, and are confined to outlining a general scheme or framework of a primary and attaching penalties to violation of party rules. The qualifications of party voters are left to the discretion of the party committee after fixing a minimum requirement; and the appointment of judges, the printing of ballots,[1] the canvass of the voter, and the recount are all placed under the control of the party. The expense of the election is also generally made a party charge, rather than a public expense; and assessments are imposed upon candidates for the purpose of meeting this item. A comparison between the laws of Florida and Illinois illustrates these differences very well.

Although the main outlines of the direct primary laws are similar, yet there are important and interesting differences in detail. The method of nominating the candidates, the majority required, the formulation of a platform, are all questions of importance in recent primary laws and must be carefully scrutinized.

Names of candidates are generally placed upon the ballot by petition of a certain percentage of the party

[1] In a number of the southern states there is no provision for the use of the Australian ballot in regular elections.

voters of the district. The number of signatures varies widely. In Pennsylvania the petitions of candidates for Congress, judge, and the state senate require 500 signatures; for the legislature and for County office 50; for other offices only 10 signatures are requisite. In Michigan the number is fixed at 2 per cent. of the party voters in the district; in Montana, at 3 per cent.; in Massachusetts, at 5 per cent.; in North Dakota, at 10 per cent. The most common figure is about 5 per cent. In some states an attempt is made to insure a general distribution of support throughout the constituency. For example, in Wisconsin a petition for state office must contain the signature of 10 per cent. of the voters in six counties, and the total must aggregate not less than 1 per cent. of the state vote.[1]

In many cases a fee is required of the candidate in return for the privilege of appearing upon the ballot. In North Carolina the amount is fixed at $5; in Minnesota, $20; in Louisiana, at $250 for important offices, but this state refunds the amount in case the candidate either polls 10 per cent. of the vote cast, or withdraws before the primary is held. In other

[1] Some attempts have been made to limit the petitions presented. For example, Wisconsin has enacted that no petition should be presented containing names in excess of 10 per cent. of the total number of party voters, while the Oregon law of 1901 forbade the circulation of petitions more than 50 days prior to the date of the primary election.

cases, the fee is fixed at a percentage of the salary or emoluments of the office. In North Dakota (1905) 2 per cent. of the salary is asked, but for senators the amount is fixed at $30. From representatives $10 is required; from county commissioners, surveyors, and coroners, $3; and from constables and justices of the peace the moderate fee of $1 is exacted. The Nebraska act of 1905 attempted to fix the fee at 1 per cent. of the emoluments of office, but this must be not less than $10. In Indiana a sliding scale is provided, and this is also the case in the Texas and Illinois laws of 1905. In other cases the expense of the primary is assessed upon the candidates by the party authorities. In Texas the law requires that this shall be done "in such manner as in their judgment is just and equitable, giving due consideration to the importance and emoluments of each such office for which a nomination is to be made."[1] The Louisiana law authorized the committees to assess sums against candidates.[2] The Mississippi act deals with this question in some detail, providing that only the cost of printing ballots and transmitting ballot-boxes and booths, and under no circumstances payment for services of committee officers or executive committees, shall be apportioned among all the candidates.[3] "No candidate for state

[1] 1905, chap. 11.

[2] 1906, chap. 49.

[3] Mississippi, 1902, chap. 66.

or district office," says the law, "shall be assessed more than are candidates for county office." It is further required that "within two weeks after the last primary each county executive committee shall prepare and file with the circuit clerk of their respective counties an itemized account, showing the expense incurred in conducting such primary election and the amount received from each candidate, and shall refund to candidates each his pro rata of what remains, if anything, in excess of such expenditures." The failure to perform any of the duties required by this section is declared to be a misdemeanor.

The method of arranging names of candidates upon the ballot varies in the several states. Commonly the alphabetical order is observed, but in recent years, it has been asserted that there is some injustice in this system, especially where there is a large number of candidates. Under such circumstances it may happen that persons whose surname begins with the last letter of the alphabet will suffer in comparison with one who has a name beginning with A. To counteract this advantage of position, provision has been made for rotation of names in printing, so that each candidate will head the list as many times as each of his rivals. Such a requirement is found in the Oregon law of 1904, the Michigan law of 1905 (local acts), and in the Indiana

and North Dakota laws of 1907. In Illinois and Washington the names of candidates are printed in the order in which declaration of candidacy has been filed, but this has resulted in an undignified scramble for first place.

The majority required for nomination under the direct primary system is a subject upon which recent legislation exhibits considerable variation. In some cases nomination is made by a simple plurality and the candidate receiving the largest number of votes is declared the nominee; in others a majority vote is required; and, in the absence of such a vote, either a second primary is held or a choice is made by delegates. Or a percentage, less than a majority, may be required, and the convention choice made the alternative; or a system of preferential voting may be adopted, in which the voter indicates both first and second choices, and in case no candidate receives a majority of first choices, recourse may be had to the second.

Nomination by a simple plurality is the most common method throughout the North, but in the southern states, where any reference is made to the vote necessary to nominate, the figure is fixed at a majority. Mississippi requires a second primary within three weeks, in case a majority is not received by any candidate, for state or district office; but if all the candidates agree, in a county or local election a

plurality may nominate.[1] Florida requires a second primary within four weeks, and the Louisiana act of 1906 contained a similar requirement. Texas, after a good deal of vacillation, has finally fixed upon a plurality as the appropriate thing.[2] In Tennessee the question of majority or plurality nominations is left to the option of the party.

In some states, because of a fear that plurality nominations might result in the choice of a candidate by an insignificant fraction of the party, a minimum percentage of the total vote cast has been required by the legislature. In Michigan, if the leading candidate does not receive 40 per cent. of the vote, choice must be made by the convention.[3] In Alpena County, Michigan, unless 25 per cent. of the vote is received by some candidate, a second primary must be held within two weeks. In South Dakota (1907) unless 30 per cent. of the vote is received, a candidate for the given office must be selected by the

[1] Chap. 66, sec. 5; Mississippi, 1902; but in the case of state or district office, "if the candidate who received the highest popular vote for such office, received a majority of the electoral vote, by giving to each county the same electoral vote that it has representation on the district executive committee, and by giving the electoral vote of the county to the candidate having the highest popular vote in the county, he shall be declared the nominee." Repealed in 1904, chap. 129, sec. 2. This county system is also used in other states of the South.

[2] See Laws of 1903, 1905, 1906, 1907.

[3] 1907, extra session, chap. 4.

convention.[1] In Iowa 35 per cent. of the vote is necessary.[2]

In the Washington law of 1907 provision is made for the preferential vote. Voters are required to designate a first and second choice for all state and congressional offices where there are more than four candidates. If no candidate receives more than 40 per cent. of the first-choice votes, a canvass must be made of the second choices, which are then added to the first choices.[3] A similar system was strongly urged by Governor La Follette, of Wisconsin, 1906.[4] The La Follette plan, provided, however, that if no candidate received an absolute majority, the votes of the candidate receiving the least number of votes should be distributed among the remaining candidates, and so on until some candidate obtained a majority.

The substitution of the direct vote for the delegate system at once raises the question as to how the party platform shall be framed. By what method shall the declaration of party principles be made, if there is no longer a party council? Various solu-

[1] 1907, chap. 139. [2] 1907, chap. 51.

[3] 1907, chap. 209. The Illinois law of 1905 provided that in case no candidate received a majority of all the votes cast, the convention should choose.

[4] See *New York State Library Bulletin*, 1906, Digest of Messages of Governors; Charles K. Lush, *American Political Science Review*, 1907, p. 43.

tions of this question have been given in the different states. In the South little trouble has been experienced, as the platforms are made by the candidates themselves during the primary campaign. Each aspirant for office makes a statement of his position, or that of his group of friends and followers, and over these statements of principle, having in view of course the personality of the candidates, the battle is fought. Hence, there has been no legislation regarding the formulation of the platform, except in the state of Texas.

In Wisconsin the law of 1903 requires that the candidates for state and legislative office, with the holdover members of the party in the legislature, shall meet at the state capital on the fourth Tuesday in September and formulate a platform of party principles. The theory of this is that the platform should be made by those whose duty it will be, if elected, to carry it out. Where state issues are concerned, legislative and administrative officers are those upon whom this duty would naturally devolve. In North Dakota the platform is framed by the state central committee with the candidates for state office,[1] and a similar method is followed in Kansas,[2] and Missouri.[3]

In Nebraska a similar method, although some-

[1] 1907, chap. 109.

[2] 1908, chap. 54. [3] 1907, 263.

what more complicated, has been adopted.[1] On the first Saturday after the primary, the nominees for county office in each county meet and select one committeeman from each township or precinct. These committeemen, within one week, meet and select one delegate. The delegates meet on the fourth Tuesday in September and formulate a state platform for the party.

In states which require a choice by a convention, such as Iowa, unless a minimum percentage of the vote is obtained, delegates are elected, and a convention is held for the purpose of canvassing and declaring the result of the vote. This is also a comfortable and convenient occasion for making a declaration of party principles, as well as for the exchange of amenities, the presentation of the successful candidate, and the declaration of unwavering allegiance on the part of the defeated.

A novel method of providing for a platform was outlined in the Oregon law of 1901. The act authorized the submission of questions of public policy as parts of the platform to the party electorate on petition of 5 per cent. of the party voters. A proposition was defined as

a statement of political principle or policy or a resolution or question affecting party government or organization or administration submitted by petition under this act to be voted upon

[1] 1907, p. 263, sec. 31.

by the voters, members of the party, in a designated electoral district.[1]

The act was declared unconstitutional, however, and this feature of the law did not come to practical trial.

In Texas this plan was revived in 1905. Whenever delegates are selected to a state or county convention, on application of 10 per cent. of the voters of the party, any question of party policy desired must be submitted to a party vote; and delegates are considered as instructed on the propositions that are so carried. In the law of 1907, this policy was still more clearly and strongly stated:

> Any political party shall never place in the platform or resolution of the party they represent any demand for specific legislation on any subject, unless the demand for such specific legislation shall have been submitted to a direct vote of the people, and shall have been indorsed by a majority vote of all the votes cast in the primary election of such party.[2]

Furthermore, the Nebraska act of 1907 authorizes the submission of proposed constitutional amendments at the party primary, and the approval or disapproval of the party may be indicated upon the ballot. Under the Nebraska law the yes or no of a political party upon a proposed amendment may be printed on the ballot in the party column, so that

[1] 1901, p. 405, sec. 13.

[2] Chap. 177, sec. 120. But legislation may be *requested*.

a mark in the party circle covers not only the candidates but the party position on the amendment.[1]

The Oregon law (1904) permits the candidate in filing his nomination petition to state his principles in not more than one hundred words, and to present a statement of not more than twelve words to be printed on the ballot as his platform.

The choice of presidential electors and the selection of delegates to the national nominating convention is generally excepted from the scope of the direct primary system. In Wisconsin, however, the law of 1905 provided for the election of delegates to the national convention by a direct vote. Two are chosen for each congressional district, and four by the state at large. In 1907, Wisconsin required the convention to nominate electors at large as well as for each district. In Pennsylvania (1906) delegates to national conventions are elected at the primaries, and delegates at large by state conventions, while the method of choice of presidential electors is optional with parties. In other states the choice of delegates to the national convention has been left under the old system.[2]

In many western and southern states the direct

[1] 1907, chap. 52.

[2] Washington (1907) excepted presidential electors; this was also the case in Missouri, 1907; North Dakota, 1907; Nebraska, 1907; Iowa, 1907.

primary method has been applied to the choice of United States senators as well as to state officers.[1] In the southern states, victory in such a primary, on the Democratic side, is practically the equivalent of an election, as there is but one effective party in that section of the country. The direct nomination of senators is generally accomplished under voluntary party regulations, as in Alabama, Arkansas, South Carolina, and Virginia. In other cases, however, this method of choice has been placed under legal protection, as in Florida (1901), Mississippi (1902), Louisiana (1906), and Texas (1907). Some northern states have also adopted this method of direct nomination. Among the northern states, Wisconsin led the way in 1903, followed by Oregon in 1904, Montana in 1905, Iowa, Washington, Nebraska, North Dakota in 1907, Illinois, Kansas, New Jersey, Ohio, and Oklahoma in 1908. If a primary for the selection of party candidates is followed by a popular vote upon candidates so nominated, the legislature should receive sufficient information to make a popular and representative choice. In some of the states, as in Oregon, candidates for the legislature are afforded an opportunity to pledge themselves to vote for the party candidate receiving the highest vote in the regular election. In other cases a pledge

[1] On this general topic, see the excellent treatise on *The Election of Senators* by George H. Haynes (1906), especially chap. xi.

is made to vote for the candidate receiving the highest number of votes in the primary.[1]

It has already been indicated that our nominating system rests upon a combination of the primary and the petition methods. When the Australian ballot system was adopted, we took over the English method of nomination by petition, but retained the system of convention or primary nominations. For forty years a strenuous effort has been made to regulate this nominating system, and to surround it with all the safeguards of the election. In many states this has been accomplished, and the selection of the party candidate is conducted with all the securities of the regular election. In the meantime, another movement has developed and threatens the entire nominating system, not only in form, but also in principle. The defenders of the new faith reject the primary altogether, and demand a return to the system of nomination by petition, contending that the legal recognition of the party, involved in the primary system, merely intensifies and tends to perpetuate the very evils it is intended to cure. Applied solely to local elections, this idea has made considerable progress within the last few years. Indiana in 1903 enacted a law providing that in cities having a popu-

[1] Oregon, 1904, sec. 13. In Washington the candidate may pledge himself to vote for the *party* choice for United States senator (1907, sec. 31). This latter is the general rule.

lation of over 100,000 the school commissioners should be nominated by petition only. The signature of 300 voters to each name is required, and the names of candidates printed upon the ballot without party designation. Grand Rapids in 1905 provided for the nomination of members of the school board by petition only.[1]

In the reorganization of the Newport (R. I.) government, provision was made for nominating city officers by petition only.[2] Nominations for mayor may be made upon presentation of a petition signed by 250 voters; for aldermen and members of the school committee, upon petition of 100; and for members of the representative council, on petition of 30. Names of all nominees are printed upon the ballot without any indication of party allegiance or affiliation.

In Washington[3] names of candidates for judicial positions are printed upon either ballot upon petition, but do not certify their party affiliations. Names of all candidates filing petitions are printed upon the primary ballots of all parties, and those receiving

[1] 1905, chap. 593, local acts. Library commissioners were so chosen for some time before this.

[2] 1906, chap. 1392. See *Proceedings American Political Science Association*, 1906; the Newport Charter, Admiral F. A. E. Chadwick, 58, 1907; cf. Easton, Md., 1906, chap. 48; Fresno, Cal., 1905, p. 1026.

[3] 1907, chap. 209.

the highest number of votes become the candidates at the regular election.

A still more remarkable development is seen in the system created in Iowa for cities adopting the commission form of government.[1] This law provides for holding a non-partisan primary in which all voters participate without regard to party affiliations. The two persons receiving the highest number of votes in the primary for the office of mayor are the candidates for that office in the regular election. The eight persons receiving the largest vote for commissioner are made candidates for the four positions of commissioner. No nominations by petition are permitted, and the voters must choose between the candidates selected in this non-partisan method.[2]

Wisconsin has also provided that cities of that state may adopt the method of nomination by petition only, but with the following modification.[3] On petition of 5 per cent. of the electors, not less than twenty days before the date of the regular election, a preliminary election must be held for the purpose of selecting two candidates for each office. The candidates chosen at this preliminary election, which is held seven days before the regular election, are then voted upon at the ensuing regular election.

[1] 1907, chap. 48. [2] Names may be written upon the ballot.

[3] 1907, chap. 670.

It is evident, then, that it is by no means certain that the direct primary is the final form of nomination. Already the advance guard of electoral reform has deserted its standard, and has taken up the task either of wholly abolishing primaries, or of fusing party primaries together in the form of a non-partisan preliminary election. To the careful student of political tendencies this new movement is deeply significant.

As a result of the movement of the last decade over two-thirds of the states in the Union now have the direct primary in some form. The states may be grouped as follows:

1. States having mandatory laws covering practically all offices: Illinois, Iowa, Kansas, Louisiana, Mississippi, Missouri, Nebraska, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Washington, Wisconsin.

2. States having optional laws covering practically all offices: Alabama, Florida, Kentucky, Michigan, Tennessee.

3. States having mandatory laws covering practically all except state offices: Minnesota, Ohio, Pennsylvania.

4. States having mandatory laws covering certain localities or offices: Indiana, Massachusetts, Michigan, New Jersey, Tennessee.

5. States having optional laws covering certain

localities or classes of local offices: Connecticut, Delaware, Indiana, Maryland, Maine, Massachusetts, Michigan, New York, North Carolina, Rhode Island.

In addition to this, practically all of the southern states have party rules providing direct primaries for nearly all offices. In brief, about one-third of the states of the Union containing about one-half of the population of the United States, employ the direct primary system for practically all elective offices. Including the southern states, where party rules require direct nominations, about one-half the states are using the direct method. About one-third of the states either legally require the direct primary for certain localities, or make the system optional. In another third of the states no provision is made for nominations by direct vote. In general, it may be said that the southern and central sections of the United States are committed to the direct primary principle, while the northeastern group of states and the Rocky Mountain group remain largely indifferent. In the central section, Indiana continues to be reluctant to adopt the system, while, on the other hand, Massachusetts and Pennsylvania are in advance of the northeastern group. The Rocky Mountain states, Montana, Colorado, Utah, Idaho, Nevada, Wyoming, together with California, remain outside the general movement.

The inevitable conclusion from a study of recent primary legislation is that the delegate system is about to be supplanted by the new form of nomination. Unless a reaction sets in soon, the desire for the direct primary in another ten years will have swept over the entire country and it will have become the universal method of selecting party candidates. So far as municipal elections are concerned, it must not be forgotten that nomination "by petition only" looms up as a dangerous rival of the new system, while the non-partisan primary is a factor to be seriously considered.

CHAPTER VI

JUDICIAL INTERPRETATION OF PRIMARY ELECTION LEGISLATION

Since the process of legislation under our system of government is not complete without the approval or acquiescence of the judiciary, it is important to inquire into the attitude of the courts toward primary legislation in the several states.[1] The number of cases is not great; in fact, for almost twenty years, from the time when such laws were first passed, there seems to have been no case at all. The few decisions rendered are, however, of fundamental importance in a study of primary legislation. To what extent, then, have the courts approved or vetoed primary legislation, and by what process of reasoning have their conclusions been reached?

There were some faint indications in early decisions regarding related questions that the courts might

[1] See the excellent discussion by Professor Mechem, "Constitutional Limitations on Primary Legislation," *Michigan Political Science Association Proceedings*, 1905; Alonzo H. Tuttle, "Limitations upon the Power of the Legislatures to Control Political Parties and Their Primaries," *Mich. Law Review*, I, 466; Meyer, *Nominating Systems*, chap. x; *American and English Encyclopedia of Law*, Vol. X, *s. v.* "Elections;" James T. Crossley, "The Legal Aspects of Primary Election Laws," *Proceedings Iowa State Bar Association* (1907), p. 135.

not look with favor upon the attempt to regulate by law the affairs of a voluntary political association. In Michigan it was held that a law requiring registration commissioners for the city of Detroit to be chosen from the two leading political parties, was unconstitutional.

> Parties [said the Court] however powerful and unavoidable they may be, and however inseparable from popular government, are not and cannot be recognized as having any legal authority as such. The law cannot regulate or fix their numbers, or compel or encourage adherence to them.[1]

In Pennsylvania[2] it was decided that a wager on a primary election was not contrary to the law forbidding betting on the regular or general elections. An election within a party, it was said, differs widely from the election of officers. "Such a primary election," the decision ran, "is as plainly without the purview of the act of 1839 as is the election of officers for a private corporation." It was not denied, however, that the provisions of this act could be extended to cover primary elections, by appropriate legislation.

On the other hand, the right of the legislature to regulate in some detail the method of voting had been early recognized by the courts. In the famous

[1] Attorney-General *v.* Detroit Common Council, 24 *N. W. Rep.*, 887; 58 *Mich.*, 321 (1885).

[2] Commonwealth *v.* Wells, 110 *Pa. State*, 463 (1885).

case of Capen *v.* Foster,[1] Justice Shaw expounded the principles applicable to the control of elections. The Massachusetts law of 1821[2] required the mayor and aldermen of Boston to make out a list of qualified voters, and prohibited anyone from voting whose name did not appear upon this list. This act was attacked upon the ground that it provided "new and additional qualifications" for suffrage, and was therefore unconstitutional. The Court said, however, that

> in all cases, where the constitution has conferred a political right or privilege, and where the constitution has not particularly designated the manner in which that right is to be exercised, it is clearly within the just and constitutional limits of the legislative power, to adopt any reasonable and uniform regulations, in regard to the time and mode of exercising that right, which are designed to secure and facilitate the exercise of such right, in a prompt, orderly, and convenient manner. Such a construction would afford no warrant for such an exercise of legislative power, as, under the pretense of and color of regulating, should subvert or injuriously restrain the right itself.

Other and later registration acts were also upheld upon similar principles in various states.[3]

[1] 12 *Pickering* 485 (1832, Massachusetts).

[2] 1821, chap. 110; 1822, chap. 104; also 1802, chap. 116; 1813, chap. 68.

[3] See opinion by Justice Brewer in State *v.* Butts, 31 *Kansas* 537 (1884); People *v.* Hoffman, 116 *Ill.*, 587. In a number of instances, however, registration laws were held unconstitu-

The first examination of the constitutionality of a primary law by a supreme court appears in Colorado in 1886.[1] The legislature, having under consideration a primary bill, inquired of the Supreme Court, as the law of that state permits, its opinion on the question of the constitutionality of the pending measure. The inquiry was as follows:

1. Is it constitutional to enact any law attempting to regulate the machinery of a political party in making nominations of candidates for public office?

2. Can the law take any cognizance of political parties as such?

3. Can the law interfere in any wise with the modes and methods employed by a political party in the nomination of its candidates for public office?

4. Are the provisions of the bill properly subject-matter of legislation?

To this the court replied, without elaboration, that it found no constitutional objection to the bill submitted.

In an important Pennsylvania case, involving the constitutionality of the act of 1881 prohibiting bribery and fraud in nominations, the principle of primary regulation was raised and discussed in 1886.[2] It was strongly urged by those contesting the validity

tional. See Dell *v.* Kennedy, 49 *Wis.*, 555; Daggett *v.* Hudson, 43 *Ohio State*, 548; White *v.* Co. of Multonomah, 13 *Oregon*, 317; State *v.* Corner, 22 *Neb.*, 265.

[1] In the matter of House Bill No. 203, 9 *Colo.*, 631.

[2] Leonard *v.* Commonwealth, 112 *Pa.*, 607.

of the law, that the legislature had no power to regulate the internal affairs of a party. It was argued, that—

> whilst the legislature undertakes to fix a certain penalty, yet it attaches and can be enforced only when the cause for it is legislated into existence by some unincorporated, unknown and irresponsible body, acting without authority of and not responsible under any law.

This amounted, it was contended, to a delegation of legislative power to political parties, and was therefore contrary to the constitution of Pennsylvania. To sustain such legislation would

> stretch the arm of the criminal law to an unwarranted extent over the citizen, in derogation of the constitutional right of citizens to assemble together for their common good; for what is a convention or primary meeting but such an assemblage.[1]

Had this view of primary regulation prevailed generally, the course of legislation might have been wholly changed. The court approached the question however, from the side of public interest and policy. Far from being a purely private affair, it said, party primaries are of general public interest. They are, in fact, in many cases equivalent to elections. The opinion declared:

> The importance of the relation of the primary is evident to every one who does not shut his eyes that he may not see, and stop his ears that he may not hear. Primary elections and nominating conventions have now become a part of our great

[1] *Ibid.*, 618.

political system, and are welded and riveted into it so firmly as to be difficult of separation.[1] . . . . In the conduct of primaries there have arisen evils of the very gravest character, which are patent to every observer. These evils "more than anything else have undermined and weakened our whole system of government. To say that the legislature may not lay its hand upon a public evil of such vast proportions is to say that our government is too weak to preserve its life. There is not a line in the constitution which, in express terms, or by any reasonable implication, forbids this legislation.

A similar position was taken by the Illinois court in 1891[2] in the case of Shiel *v.* Cook County. The constitutionality of the primary law of 1889 was called in question, but the act was sustained by the court in a strong option:

Whatever [it is said] tends to corrupt elections in a free government or detract from the efficiency and honesty of the public service must needs be a matter of grave public concern, and all methods which have for their object the prevention of those abuses which every good citizen has observed with profound apprehension, by which incompetent and corrupt men have been chosen to offices of trust and power, should be commended and upheld.

In the meantime the movement in favor of the adoption of the Australian ballot system began. In 1888 the law was first accepted by Massachusetts and this initial step was rapidly followed by the majority

[1] Leonard *v.* Commonwealth, 112 *Pa.*, 625, 626.

[2] 27 *N. E. Rep.*, 293.

of the states.[1] The most important feature of this legislation, in its bearing upon primaries, was the provision for an official ballot, upon which the names of the candidates of all parties should be printed. This process involved the legal recognition of such parties as were entitled to certify their candidates to the appropriate officers. This necessitated an intimacy of relation between political parties and the law closer than had hitherto been known. A series of attacks was made upon the constitutionality of the ballot laws, but in general the action of the legislatures in creating the new regulative scheme met with emphatic judicial approval.[2]

The decisions in the line of cases regarding registration and the Australian ballot naturally smoothed the way for favorable treatment of the acts regulating the conduct of primaries. With such precedents established, the courts have experienced little difficulty in finding grounds for the support of primary legislation. In a few instances acts have been declared unconstitutional, notably in California[3] and

[1] See John W. Wigmore, *The Australian Ballot System*, Boston, 1889.

[2] See John H. Wigmore, "Ballot Reform: Its Constitutionality," *Am. Law Rev.*, XXIII, 719 (1899); *American and English Encyclopedia of Law*, X, p. 586.

[3] In Marsh *v.* Hanley, 43 *Pac.*, 975, the act of 1895 was declared unconstitutional; in Spier *v.* Baker, 52 *Pac.*, 659, the act of 1897 was declared unconstitutional; in Britton *v.* Board of

in Illinois,[1] but in these cases particular and relatively unessential features of the laws have been called in question rather than the general authority of the legislature to regulate the nominating process.

An examination will first be made of the broader grounds upon which primary laws have been attacked and sustained. The early contention regarding the natural right of political parties to free association and action has not been wholly abandoned in recent assaults upon primary measures. In a Mississippi case, McInnis *v.* Thames,[2] the power of the legislature to provide rules and regulations for party government was strenuously contested. "What," said the appellants, "would your honors think of an act of the legislature which undertook to provide for, and regulate the election of the officers of, a religious denomination in the state?" Could the legislature, it was asked, prevent any two or three citizens of the state from assembling and agreeing that a particular individual was especially qualified and fitted by education, habits, and brain force, to fill creditably the office of governor of the state? And if three

Election Commissioners, 61 *Pac.*, 1115, the act of 1899 met the same fate. A constitutional amendment was then adopted.

[1] In People *v.* Election Commissioners, 221 *Ill.*, 9, the act of 1905 was declared unconstitutional; and in Rouse *v.* Thompson, 81 *N. E.*, 1109, the law of 1906 was similarly viewed.

[2] 80 *Miss.*, 617 (1902).

could not be restrained, how could three hundred constitutionally be restrained?

In New York this position was strongly stated in a dissenting opinion.[1] Here the right of a party committee to expel for disloyalty a member who had been duly chosen in a legal primary was in question. The majority of the court upheld the law against the committee. Justice Cullen in a dissenting opinion said:

> The right of the electors to organize and associate themselves for the purpose of choosing public officers is as absolute and beyond legislative control as their right to associate for the purpose of business or social intercourse or recreation. The legislature may, doubtless, forbid fraud, corruption, intimidation, or other crimes in political organization the same as in business associations, but beyond this it cannot go.

It was also contended that the

> rules and principles on which political parties are to be conducted must necessarily lie largely beyond the domain of legislative interference, because they relate to the action of the people, the ultimate source of sovereignty, in what is unquestionably their prerogative, the election of public officers.[2]

The doctrine of the natural rights of parties has

[1] People *v.* Democratic Committee, 164 *N. Y.*, 335 (1900). Compare the earlier decision in McKane *v.* Adams, 123 *N. Y.*, 609. See Cummings *v.* Bailey, 104 *N. Y. Supplement*, 283.

[2] A radical statement of this general doctrine was made in Louisiana (1908) in the case of Labauve *v.* Michel (Civil District Court), but the decision was overturned by the Supreme Court in State *v.* Michel, 46 *La.*, 430.

not, however, found general favor. In Ladd *v.* Holmes[1] it was said,

> Legislative authority is adequate to prescribe all reasonable rules and regulations looking to the security and safeguarding of these sacred rights and privileges. In so doing, the right of the adherents of the respective parties to assemble and consult together for their common good, is in no way infringed upon. Far from being contrary to the letter or the spirit of the constitution, such legislation is in reality designed to insure the rule of the majority. Party management [said the Court] is of such vital importance to the public and the state that its operation, in so far as it respects the naming of candidates for public office, is an object of special legislative concern, to see the purposes of the constitution are not perverted, and the people shorn of a free choice.

In New Jersey the objection had been raised that the Act of 1903 interfered with the rights of political parties to prescribe terms of membership and make rules and regulations for their own government.[2] The court distinguished between "the determination of the legislature of conditions of things already in being, and enactments by the Legislature that bring into existence conditions that previously, have not, and but for such legislation would not have, any existence." The regulation of the law to preserve the peace of a camp-meeting and regulations to protect the political party were declared to be the same in nature.

[1] 66 *Pac. Rep.* 714 (Oregon, 1901).

[2] Hopper *v.* Stack, 56 *Atl. Rep.* (N. J., 1903).

If in place of camp-meeting we read political parties, and if for the avowed object of such religious gatherings we substitute the known purposes of such political associations, we shall have in its simplest form, the domain of fact which the legislation in question must have recognized as subsisting before exercising over it the regulation and protection features of the statute under review.

Such statutes involve, therefore, "only the recognition of an existing state of facts, and a determination to throw over them the protection of police regulation." With the wisdom of such regulations the judicial branch of the government has nothing to do, or at least must not presume in advance unworthy conduct or abuse of power on the part of a co-ordinate department.

Indeed, in an interesting Illinois case, it was held that a county central committee could not even be delegated power by the legislature to establish delegate districts.[1] The court said that the sections of the law granting such power were

clearly unconstitutional and void in attempting to confer the power to designate and establish delegate districts throughout the state upon the county central committees of the several political parties in the state, on the ground that said county central committees are not public agencies, but private individuals, and that legislative power under no circumstances can be delegated to a private individual.

On the whole, the courts have not been much

[1] Rouse *v.* Thompson, 81 *N. E. Rep.*, 1109 (1907).

inclined to recognize the "natural rights" or the right of association of political parties, strongly defended though they have been. The claims of the party as a voluntary association to regulate its own affairs have been completely broken down.[1] The determination of the qualifications for membership in parties, specifications regarding the structure of its official organization, and the minute regulation of its procedure, have all been upheld, either as incidents of the privilege to certify nominations for the official ballot, or as regulations in the interest of purity of elections. In State *v.* Michel the court said that the law had been adopted "in the exercise of the police power of the state."[2]

Another ground of support for primary legislation has been the plenary power of the legislature in the absence of constitutional provisions to the contrary. In several cases the courts have laid down the principle that since the legislature has all power not prohibited to it either by the state or under the United States Constitution, and since there are no constitutional prohibitions restraining the legislature, the validity of the law must be upheld.

[1] In some cases it has been held that membership of a political committee is not a public office. See Greenough *v.* Lucey, 66 *Atl. Rep.*, 300 (R. I., 1907); Attorney-general *v.* Drohan, 169 *Mass.*, 534; but do not deny it may be made so by the legislature.

[2] 48 *So. Rep.*, 436.

When the Maryland act of 1904 was under fire, the court said:

> The General Assembly, being the depository of all legislative power except when restrained by the organic law, it follows that it is clothed with full power to enact a primary election law, if there is no provision in the Constitution depriving it of that authority.[1]

The easiest, and what might be termed the typically legal, method of upholding a primary law, is to declare that its provisions are a part of the Australian ballot law. Since certain parties are accorded under this plan special privileges upon the ballot, they must in return submit to special requirements. The privilege of having the names of candidates placed upon the ballot upon certification of party officials, instead of by petition, is, so the argument runs, to be paid for by minute legal regulation of the procedure of the party.

Justice Holmes stated this clearly when he said in Commonwealth *v.* Rogers:[2] "The legislature has a right to attach a reasonable condition to that advantage, if it has a right to grant the advantage"[3]—that is, the right to have the names of candidates placed upon the ballot without a petition.

To the broad question, then, whether the legisla-

[1] Kenneweg *v.* Alleghany Co. Commissioners, 62 *Atl. Rep.*, 250 (Md., 1905); cf. McInnis *v.* Thames, 80 *Miss.*, 629.

[2] 63 *N. E. Rep.*, 421 (1902).

[3] P. 423. Cf. Ladd *v.* Holmes, 66 *Pac. Rep.*, 714 (Oregon).

ture has power to enact a primary law regulating the internal affairs of a political party the judiciary has generally returned a favorable answer. In principle, such legislation is universally conceded to be constitutional. No court has yet held to the contrary. Particular provisions or features of such acts have, however, been subjected to severe criticism and have occasioned the overthrow of more than one law. It is therefore important to examine these specific points.

All primary laws contain a limitation of some sort, confining the scope of the primary law to parties polling a certain percentage of the total vote—a figure ranging from 1 to 10 per cent. This has exposed such statutes to attack from the smaller parties who were, upon this basis, required to secure a petition in order to obtain places upon the ballot, as well as from others who saw here a joint in the harness of the primary law.

In California[1] a decision was given against the act of 1899, which recognized parties polling 3 per cent. of the total vote. The court held that this was a discrimination against minor parties, and that it deprived them of privileges and immunities to which they were justly entitled. If this principle were once recognized, there would be no logical halting place, and parties polling 49 per cent. of the vote

[1] Britton *v.* Board of Election Commissioners, 61 *Pac. Rep.*, 1115 (1900).

might be as readily discriminated against as those polling only 3 per cent. In this way a party in control of the legislature might frame a primary law to the very great disadvantage of its opponents.

In general, however, classifications of parties for primary election purposes have been sustained as reasonable regulations incidental to proper control of nominations. Thus in Minnesota[1] it was said that the legislature

> may classify political parties with reference to differences in party conditions and numerical strength; and prescribe how each class shall select its candidates; but it cannot do so arbitrarily, and confer upon one class important privileges and partisan advantages and deny them to another class, and hamper it with unfair and unnecessary burdens and restrictions in the choice of its candidates.

Again, it has been declared in Nebraska[2] that—

> to say that any number of voters, however small, may associate themselves together as the embodiment of some political principle or policy of government, and be entitled to representation on the primary ballot is to pave the way to endless confusion and to destroy in a large measure the objects sought to be attained by such law.

In a Maryland case[3] it has even been held that the

[1] State *v.* Jensen, 86 *Minn.*, 19 (1902), a case brought by the Prohibitionist Party.

[2] State *v.* Drexel, 105 *N. W. Rep.*, 174 (1905). Cf. 58 *Ohio St.*, 620; 89 *N. W. Rep.*, 1128.

[3] Kenneweg *v.* Alleghany Co. Commissioners, 62 *Atl. Rep.*, 249 (1905). A Texas act of 1905 (Special Acts, chap. 25, sec. 10*a*),

legislature may regulate one party alone, if it sees fit, without regard to the others. In fact such laws have actually been passed in some instances, as in Texas, where the statute of 1905 was mandatory only upon parties polling 100,000 voters at the last general election—a regulation which covered only the Democratic party.

Whether a primary law applicable only to a certain part or to parts of the state falls within the prohibition of special and local legislation found in many of the state constitutions, has been a frequent subject of controversy in the courts. In general such objections have not been sustained, although there are notable exceptions to this. The California law of 1895 applying to two counties only was promptly declared unconstitutional by the Supreme Court of that state.[1] The law did not have uniform application; a general law was applicable to the case; the constitution required such a general law, where possible; and therefore the act was void. In Ohio the act of 1898, applying to cities of the first grade of the first class, was held to be special legislation in a case where the constitution called for a general law.[2] It seemed to the court that in such a case

provided that a certain charter question should be submitted to a popular vote of the Democrats at the regular party primary, and that the council should be bound by this referendum.

[1] Marsh *v.* Hanley, 43 *Pac. Rep.*, 975 (1896).

[2] City of Cincinnati *v.* Ehrmann, 6 *Ohio N. P.*, 169 (1899).

there was no justification for a special law, although special legislation in Ohio had for many years been allowed full swing in many other respects. The Illinois law of 1905 was also held to be unconstitutional[1] because of the special legislation involved in creating a different system for counties of over 125,000 population (intended for Chicago) from that prescribed for the test of the state.

> Diversity of rights between legal voters [said the Court] cannot arise out of or rest upon the number of people in the county where a voter happens to reside. The fact that there are many other people in the same political situation has no relation whatever to political rights.

In the majority of cases, however, special legislation has been upheld; in fact, the greater part of the laws considered have been special in character. In discussing the Oregon law of 1901, applying to cities having a population of 100,000 or over, it was held that difference in population afforded a reasonable basis for discrimination in the nature of primary laws.[2] In New Jersey the same conclusion has been reached.[3]

Whether or no the primary election shall be regarded as a regular election, is a question to which

[1] People *v.* Board of Election Commissioners of Chicago, 77 *N. E. Rep.*, 321.

[2] Ladd *v.* Holmes, 66 *Pac. Rep.*, 714 (1901).

[3] Hopper *v.* Stack, 56 *Atl. Rep.*, 1 (1903).

various answers have been given. In Pennsylvania[1] in 1885 where the question at issue was whether the corrupt practices act of 1839 applied to a primary it was declared that a primary was not an election. "An election," said the Court, "by a party for its candidates widely differs in its object from an election by the electors for officers." In New Jersey also it was declared that "a primary is not an election in the sense of the common law. It is merely a method for the selection of persons to be balloted for at such election;" and therefore any penalties for violation of the law must be found in the statute.[2] In Illinois the primary is regarded by the court as a regular election.[3]

There is scarcely a possibility that any person will or can be elected to office under this system unless he shall be chosen at a primary election and this statute, which provides the methods by which that shall be done and prescribes and limits the rights of voters and of parties, must be regarded as an integral part of the process of choosing public officers and *as an election law.*

The test of party allegiance or affiliation has been considered in many cases, but the right of the legisla-

[1] Commonwealth *v.* Wells, 110 *Pa. State*, 463.

[2] Woodruff *v.* State, 52 *Atl. Rep.*, 294 (1902), p. 296; see Montgomery *v.* Chelf, 82 *S. W. Rep.*, 388 (Ky., 1904); State *v.* Johnson, 91 *N. W. Rep.*, 604, 841 (Minn.).

[3] People *v.* Board of Election Commissioners, 77 *N. E. Rep.*, 323; Ladd *v.* Holmes, 66 *Pac. Rep.*, 714 (Oregon); Johnston *v.* Grand Forks County, 113 *N. W. Rep.*, 1071 (N. D., 1907).

ture to regulate this matter has generally been sustained as a reasonable regulation. In an early California case, however, the requirement of a party test was declared illegal.[1] The right to determine the prerequisites of party membership was thought to be too dangerous a power to trust to the legislature.

> It would be possible [said the Court] for Democrats to make belief in free coinage of silver, or Republicans to make adherence to a protective tariff, a requirement. If such a power may be sustained under the constitution, then the life and death of political parties are held in the hollow of the hand by a state legislature.

Even if the test were itself reasonable, the mere possession of such a power is dangerous and intolerable, and therefore inadmissible.

Commonly, however, the prescription of a test of party allegiance has been sustained. In the case of Britton *v.* Board of Election Commissioners,[2] the California act of 1899 which omitted any party test was declared to be an unwarranted invasion of the rights of political parties.

> A law [it was said] which will destroy party organization or permit it fraudulently to pass into the hands of its political enemies cannot be upheld; the control of the party and of its affairs, the promulgation and advocacy of its principles, are taken from the hands of its honest members, and turned over to the venal and corrupt of other political parties, or of none

[1] Spier *v.* Baker, 52 *Pac. Rep.*, 659.

[2] 61 *Pac. Rep.*, 1115 (1900).

at all. It is expressly stated in the declaration of rights that the enumeration therein contained shall not be construed to impair or deny others retained by the people (Art. I, sec. 23). A law which thus permits the disruption or misrepresentation of a political party is an innovation (*sic*) of these reserved rights.

In Michigan, it was declared by the court that "An indiscriminate right to vote at a primary would tend in many instances to thwart the purposes of the organization and destroy the party."[1] In Oregon[2] it has been decided that the exclusion of members of other parties from participating in the primaries of a given party is not an infringement or denial of any constitutional right or privilege, and does not interfere with the freedom of elections. In Massachusetts, Justice Holmes, in discussing the legality of the requirement that the intending voter shall not have participated in the primaries of another party within twelve months, said that it was impossible to say, as a matter of law, "that that is not a reasonable precaution against the fraudulent intrusion of members of a different party for sinister purposes."[3] In New Jersey it was urged that the right to vote is a natural right and that the right to challenge a voter interfered with the secrecy of the ballot guaranteed

[1] State *v.* Drexel, 105 *N. W. Rep.*, 174 (1905).

[2] Ladd *v.* Holmes, 66 *Pac. Rep.*, 714.

[3] Commonwealth *v.* Rogers, 63 *N. E. Rep.* 421 (1902).

by the constitution.[1] The court took a different view of the question, however, and said:

> The argument that the affidavit to be made by a challenged voter violates any natural or constitutional right to secrecy possessed by him is entirely without foundation. Moreover, as the voter is not required to say for whom he voted, but only that he voted for a majority of the candidates of the party with which he claims to act, it is difficult to see wherein such partial avowal is any more inimical to secrecy than is the open and avowed partisan co-operation that has hitherto constituted the voters' credential. Apart, however, from these considerations, the matter, as an incident of police regulation, is clearly within the legislative province.[2]

Not only has the right to prescribe qualifications for participation in primaries been recognized, but the power of party committees to fix tests has been overruled by the courts in several instances. In Ginter *v.* Scott[3] a rule of the Republican party in Union County forbidding known Democrats, Prohibitionists, or Populists from voting, unless, if challenged, the intending voter affirmed that he voted the entire Republican ticket at the preceding election and would vote the ticket nominated at the primary, was overruled by the court. "It would certainly

[1] Hopper v. Stack, 56 *Atl. Rep.*, 1. The system of party registration has been upheld in California in Schostag *v.* Cator, 91 *Pac. Rep.*, 502 (1907).

[2] See Rebstock *v.* San Francisco, 80 *Pac. Rep.*, 65 (1905).

[3] 8 *Pa. Dist. Rep.*, 536 (1899).

be contrary not only to sound public policy, but also to the fact, to hold that they cease to be members of the party for whose candidates, with such occasional exceptions, they have always voted and still intend to vote." This rule applied also to candidates one of whom had signed a Democratic nominating paper in 1898, and voted for the candidates not on the Republican ticket. In Young *v.* Beckham[1] it was held that the party committee had no right to determine eligibility of office. "It can call primary elections and make proper rules for their government, but has no right to say who is eligible to be a candidate before the primary." In Dapper *v.* Smith[2] the Michigan law requiring the candidate to declare on oath that he is a candidate was held to be unconstitutional. It "excludes the right of the electorate of the party to vote for the nomination of any man who is not sufficiently anxious to fill a public station to make such a declaration." The legislature cannot "impose any condition which will destroy or seriously impede the enjoyment of the election franchise."

The requirement that a fee be paid by the candidate in order to have his name placed upon the ballot has been a subject of controversy in several states, and has been differently decided in different juris-

[1] 72 *S. W. Rep.*, 1092 (1903).

[2] 101 *N. W. Rep.*, 60 (1904).

dictions. In Illinois,[1] Nebraska,[2] and North Dakota[3] the requirement of a fee has been held to be an unconstitutional provision. The Nebraska act of 1903 provided for a payment of 1 per cent. of the emoluments of the office sought by the candidate. It was held that there was no relation between this charge and the expenses incident to candidacy or to the value of services rendered in filing the nominating petition.[4] The charge was therefore declared to be "arbitrary and unreasonable." It was also held that this payment really constituted a form of property qualification, and was therefore in contravention of the constitution. It was also held that the fee interfered with the freedom of elections, and the rights both of candidate and of voter. "It is an unwarranted hindrance and impediment to the sights of the candidate and the voters, alike, and illegal and void," said the Illinois court, in passing upon a similar requirement in that state. In North Dakota, the court denied that the payment of a fee tended to diminish fraud or was conducive to orderly

[1] People *v.* Board of Election Commissioners, 221 *Ill.*, 1.

[2] State *v.* Drexel, 105 *N. W., Rep.*, 174 (1905).

[3] Johnson *v.* Grand Forks County, 113 *N. W. Rep.*, 1071 (1907).

[4] State *v.* Drexel, 105 *N. W. Rep.*, 174 (1905); cf. 221 *Ill.*, 9. The Illinois court pronounced the fee "a purely arbitrary exaction of money to be paid into the public resources as a monetary consideration for being permitted to be a candidate."

election; and declared that the question of multiplicity of candidates was "beyond the purview of legitimate legislation."

On the other hand, the requirement of a fee has been upheld in Maryland[1] and Minnesota,[2] in the face of the same arguments as were made in Nebraska and Illinois. The fee does not constitute a property qualification, said the Maryland court.

> Primary contests necessarily require the expenditure of money for the purpose just indicated, and the money must be procured from some source. The requirement that the individuals who, through the primaries seek to secure nomination, shall pay the expenses which the governing body of the party is compelled to incur for their benefit and in their behalf is neither unreasonable nor unjust, and most certainly is not the super-addition of a property qualification for holding the offices to which they aspire.[3]

In Minnesota the fee was held to be a reasonable regulation.

> To prescribe an orderly and systematic method by which the people may select their candidates for public office is within the province of the Legislature, and apparently the exaction of a fee in filing as a candidate tends to prevent an indiscriminate scramble for office.

This fee may be fixed at a point which would not

[1] Kenneweg *v.* Alleghany Co. Comms., 62 *Atl. Rep.*, 249 (1905).

[2] State *ex rel.* Thompson *v.* Scott, 108 *N. W. Rep.*, 828 (1906).

[3] P. 251.

impose a hardship upon anyone, and within such limits will be sustained as a proper regulation.[1]

On the whole, the courts have sustained the constitutionality of primary legislation of the last forty years, with few exceptions. In California and in Illinois considerable difficulty has been experienced in securing the passage of a law that would meet the approval of the courts, but elsewhere the judicial veto has been very sparingly exercised. In no field of legislation has the judiciary shown itself more friendly to experiment than in the regulation of political organizations. The law of registration, the Australian ballot system, the legal regulation of the primary, have all been treated with greatest consideration. No particular property rights have been involved, the pressure of public opinion has been strong and steady, the judges have been conversant with the facts and the philosophy of the party system, and hence have experienced little difficulty in justifying almost every kind of a primary system that has been adopted by a legislative body. There has been unusually little of the "law's delay" to hinder the advance of primary legislation. If primary laws are not perfect, the courts cannot be blamed.

[1] In Kentucky (Montgomery *v.* Chelf, 82 *S. W. Rep.*, 388, 1904) the assessment of primary costs upon candidates was sustained on the ground that the primary was not a regular election, and hence that the constitutional requirement that elections be free and equal did not apply.

The objection of "special legislation," of unfair discrimination between political parties, of interference with the freedom and equality of elections, and of unwarranted invasion of the rights of political parties as voluntary associations, have all been met and overruled. The theory of the party as a voluntary association has been completely overthrown by the contrary doctrine that the party is in reality a governmental agency, subject to legal regulation and control. The element of public concern in the making of nominations has been strongly emphasized, and the right of the legislature to make reasonable regulations to protect and preserve the purity and honesty of elections has been vigorously asserted. The police power has been invoked against the unregulated party. The absence of any constitutional prohibition or regulation has been advanced in behalf of the law-making body of the state, and made a part of the general argument in behalf of laws attacked. And finally the privileged position of the party upon the ballot, under the official ballot system, has been used as a means of justifying all manner of restraint and regulations in return. As Justice Holmes said, "The legislature has a right to attach reasonable conditions to that advantage, if it has a right to grant the advantage.[1]

[1] Commonwealth *v.* Rogers, 63 *N. E.*, 421 (1902).

CHAPTER VII

PRACTICAL WORKING OF DIRECT PRIMARIES

The direct nomination system has now been in operation long enough and on a large enough scale to permit the collection of important data.[1] The test of experience is beginning to show the tendencies likely to develop more fully in the future. Although it is, perhaps, too early to draw definite conclusions regarding the results, it is not too soon to examine with profit some of the most important features of the new system as thus far evidenced.[2]

There seems to be a general agreement that the vote cast in a direct primary is, as a rule, greater than in a primary for the choice of delegates. To some extent this may be accounted for by the fact that in certain cases, as in Minnesota, the primary is held

[1] See E. C. Meyer, *Nominating Systems; Wahlamt und Vorwahl in den Vereinigten Staaten von Nord-Amerika; National Conference on Practical Reform of Primary Elections* (1898), 40–51, 51–57, 99–102; *Proceedings of Michigan Political Science Association* (1905), 31, 55; *Proceedings of National Municipal League* (1901), 184, 197; (1904), 321; (1907), 36; *Annals of the American Academy of Political and Social Science* (1899), 56; *Municipal Affairs*, V, 802.

[2] The writer's conclusions are based upon personal observation; upon correspondence and interviews with persons having special knowledge of primary conditions; upon newspaper clippings, printed articles and addresses. The writer also sent a circular letter to many persons in a position to have valuable in-

on registration day. It is also to be remembered that under the delegate system a number of districts are always uncontested, and that the total vote is diminished accordingly. There are also many cases where the direct vote is very light, and many other cases where the delegate primary brings out a heavy proportion of the party strength. Particularly where a party is uniformly in the minority, it is difficult to awaken much enthusiasm in regard to choice of candidates. But even with all these allowances, there can be little question that a larger percentage of the electorate participates in the primary under the direct system than under the indirect.

formation regarding the practical workings of primary laws. The questionnaire was as follows:

1. Does the direct primary bring out a larger vote than the convention system?

2. Does the direct primary increase the cost of candidacy? If so, in what particulars?

3. What is the ordinary number of candidates for any one office?

4. What percentage of the vote cast should be necessary for the choice of a candidate?

5. Is the class of nominees any higher under the direct primary system than under the convention plan?

6. Are caucuses held and slates made up *before* the primary?

7. Does the direct primary materially weaken the "organization"?

8. What are the weakest points in the direct primary system as operated in your state?

9. Is the direct primary, on the whole, superior to the convention plan? If so, in what respects?

The vigorous campaigning of individual candidates, the dramatic nature of the personal contest, the immediate importance of the individual vote—all tend to swell the size of the primary vote.

It seems to be generally conceded that the cost of campaigning where candidates are chosen by direct vote is greater than under the other system. In a delegate primary there are generally certain districts left uncontested, but where a few votes may turn the scale, the canvass is carried into every part of the territory. The few supporters won in a rival's home territory may prove decisive. In addition to the expense of a personal canvass comes the cost of advertisements inserted in the newspapers, the circulation of literature, payments for expenses of meetings, for workers, for conveyances, and for other incidentals that aggregate a considerable sum. Under the convention system there are often heavy expenses, but the disputed territory is generally limited. It seems clear that the legitimate costs of a campaign carried on among all the voters are greater than that of a fight for delegates in certain districts. Yet, if this expenditure is directed toward the education of the public, the outlay is on the whole desirable, provided the sum necessary is not so great as to exclude or unduly obligate the poor man. If the net result of mass campaigning is to arouse public interest and quicken public intelligence, the

additional burden of cost can profitably be borne by the public.

The apprehension that the direct nomination system would result in an avalanche of candidates is not confirmed by the facts. Not infrequently there is but one candidate for a particular office, and generally not more than three or four. The replies to the circular letter of inquiry show estimates varying from "1 to 2" up to "2 to 8." The average is about "2 to 3." It is probably true that there are more candidates than under the convention system—at any rate, there are more avowed candidates. Under the delegate system, the open candidates are generally few, while the number of tentative candidates is much larger. There is, as a rule, under the indirect plan a number of candidates who may be satisfied by any one of a series of offices. If the first prize, or the particular prize desired, is not obtained, then another may be accepted in the interests of party harmony. Generally speaking, the convention system developed too few open candidates and too many unavowed contestants.

The theory that the direct vote would bring out a multitude of competitors for each office, because men would be ambitious to obtain publicity, has not been sustained by experience. It is not found in practice that there are many persons who care for such public notice as is secured by the candidate who

trails along far in the rear of the leaders. This is a kind of advertising not very much desired. Arguments based upon the excessive number of candidates for any particular office are not supported by a consideration of the facts in cases where the system has been given a trial.

Upon the question as to the majority that ought to be required for nomination, there is wide divergence of judgment. Southern opinion is strongly in favor of a majority of all the votes, and, failing this, a second primary in which the two highest candidates contest. Party leaders in the North are often found to favor a majority of all the votes cast, with choice by the convention as an alternative. A discussion of the relative merits of these and other plans is found in the succeeding chapter.

Whether the class of candidates secured under the direct primary is superior to those obtained under the earlier system is naturally a crucial question. It is, moreover, a question which elicits diverse replies. There are not a few of the opinion that there is no difference or no material difference. The nomination of such men as Dr. Ames in Minneapolis and Curley[1] in Boston indicates that unfit candidates are by no means automatically eliminated. One correspondent writes that the direct primary favors "the shallow man with popular qualities and nothing

[1] While in jail for frauds against the civil service law

in particular against him, especially if he can make a good campaign in the way of story-telling." There is much evidence tending to show that the well-known man, regardless of what he is known for, has an advantage in the race for the nomination over one better qualified, but less generally known. This is particularly true where there is a large number of different offices to be filled, and where public attention is consequently distracted. In the choice of judges such a tendency is likely to produce unfortunate results. On the other hand, it is frequently declared that candidates, even if of no higher type otherwise, are more responsible to the people. If the direct primary were to develop a greater responsiveness on the part of officers toward the popular will, the gain would of course be well worth striving for, especially if the effects were evident in the law-making bodies and the more important executive positions. It is not likely that satisfactory results will ever be uniformly secured in the nomination of minor administrative offices. The direct primary possesses a great advantage in that it offers an opportunity for the defeat of a conspicuously unfit candidate and the choice of one conspicuously fit. In both cases the chance of carrying out the will of the party is greater, where nominations are made directly, than if indirectly made. In neither case will the direct primary guarantee the choice of proper candidates.

Whether, and if so with what success, lists of candidates may be made by party leaders before the primaries is a question of fundamental importance in the consideration of the merits of the direct nominating system. In many places, especially in the rural districts, no combinations are made, or at least no formal combinations. Under such circumstances the race for nomination is open to all aspirants upon practically even terms, and the favor of the "machine" counts for little; in fact, it may even be used effectively against the candidate so favored. This free-for-all style of a primary may be modified by occasional deals or combinations regarding a few offices. The next stage is that of secret conferences and understandings which are not proclaimed to the public. A more advanced situation is that where party leaders hold an official caucus at which a complete ticket is selected and presented to the primaries for ratification. In some instances, a party convention has been held before the primary and the nominations, so made, submitted to the party voters. In 1906 the Socialist party of Wisconsin adopted this plan. Such a preliminary convention is of course legal, but is directly contrary to the spirit of the law, and largely defeats its purpose. It is not likely that any party, except where hopelessly in the minority, will care to encounter the popular antagonism that would be

visited upon a course of conduct so clearly evasive of the statute.

The tendency to hold preliminary caucuses is strong, and is generally remarked. It is contended, however, that slates so made are more easily broken under the direct primary than when delegates are selected. It is said that the voters become more independent, and are often disposed to "smash the slate," in whole or in part. The primary amounts to a referendum on the caucus nominees and the elimination of the unfit is made easier than under the convention method, where, in many instances, the candidates for the minor and sometimes for the major offices are not known until nominated. In any event, the party leaders are made directly responsible to the party voters for the principles and the personal qualities of the candidates presented. If these nominees are unworthy, the voters have an opportunity to reject them and thus to discredit and disavow the authority of the slate-makers. The caucus always runs the risk of repudiation by the party electorate.

A powerful combination of interests may make a slate which, although not of high grade, is not easily assailed by the unorganized mass of the party. In theory, anyone is free to oppose it, but in practice an attack is futile unless a strong public sentiment is aroused. It is neither possible nor desirable, how-

ever, to prevent preliminary conferences, and the only safe-guard against abuse of the caucus power is the leaders' fear of insurrection, or the actual accomplishment of a revolution in the party.

The relative merits of the direct and indirect systems in practical experience is a question upon which opinion is divided. The objections commonly urged against the direct nominating system are not sustained in practice. The charge that racial or geographical discriminations will occur on an extensive scale is not supported by the experience of the communities where the system has been in operation. The urban districts have not, as a rule, monopolized the nominations to the exclusion of the rural districts, although there are some cases where this has occurred. Nor has any genuine race interest suffered from unjust discrimination, because nominations were made by the people. The proper interests of localities and races are as safe with the people as with the delegates of a convention. The knowledge that unfair combinations on a territorial or racial basis will be punished by the loss of party votes in the election, operates just as effectively under the direct as under the indirect system of voting.

That the direct primary will "destroy the party" is obviously untrue, inasmuch as party organizations continue to exist, in flourishing condition, under the

new system. The "party suicide," which some political leaders have anticipated upon the passage of direct primary laws, is yet to occur. Thus far there has been no occasion for the coroner's inquest or the post-mortem examination. In many cases the party rulers have been continued in authority; and their laws, decrees, and writs recognized as widely as before. Some complaint has been made that party dissensions are more frequent than before, and that jealousy and bitterness within the ranks is a phenomenon more common than in the days when the masters of the convention "harmonized" the ticket. It is doubtful, however, whether there are more factional disturbances of a personal nature under the new system; for it must be remembered that many a party feud has dated from some heated fight regarding the seating of delegates or the character of the rulings in a convention. The delegate who was thrown out of the convention or was overruled by the chairman, or the candidate who was beaten as a result of such tactics, is likely to develop a political hatred of the most bitter and enduring type.

Much of the difficulty of which complaint is made by party authorities has arisen in districts where only one party, commonly the majority party, nominated candidates by the direct method. Under such circumstances the minority party frequently

holds its convention after the majority's primary, and takes full advantage of any factional disturbances that may have developed among the opposition. For example, if there has been a contest over the office of sheriff, the minority may select a particularly strong candidate for this position, obtain all the advantage possible from the rivalries in the other party, and possibly win at this point.

It is unquestionably true that the press becomes a more important factor in the direct primary system than under the delegate plan. Since the candidate cannot meet personally all of his constituents, the attitude taken by the great organs of publicity seriously affects his prospects. It may happen that the press is dominated by factional or other special interests, and hence that a particular candidate or group of candidates may not receive adequate or proper notice. The general dictation of nominations by a prejudiced or venal press would, of course, be a political calamity of serious proportions. But the danger to the cause of good government from this source is not as serious as might be presumed. In the first place, the newspaper is not the only agency by which public opinion is influenced, but merely one of a number of them. Again, it is a fallacy to presume that a newspaper continuously influences large masses of voters unless the community has come to believe that this journal is, on the whole, honest in

its intentions, clear in its vision, and temperate in its judgments of men and measures. Demagogic appeals to popular passion and cunningly concealed pleas for special interests may bring temporary success, but in the long run the newspaper of either type will not possess the confidence of the electorate, and will not enjoy a wide circle of influence. If there is no such journal in a given community, the establishment of one might be recommended as a safe investment.

As a matter of fact, where direct primaries are tried, the press is generally fair in its treatment to the several candidates. Pictures and announcements of all candidates are commonly printed, regardless of the editorial policy of the paper. Advertising sometimes overcomes a multitude of sins. Fear of the press is, then, all things considered, ungrounded. The press must circulate among the people and must be in the end what the people want. Individual instances of unfairness and corruption cannot be regarded as typical of the journalistic attitude.

Much more serious are the objections that the direct primary increases the cost of candidacy, and fosters the demagogic type of officer. That the expense of conducting a campaign is greater seems to be generally conceded, although there are those who are inclined to doubt this. That the demagogue will, on the whole, fare better before the party voters

than before the party representatives is an assertion that cannot yet be established. The "sober second thought" of the convention can scarcely be assumed to have unerringly fixed upon the best candidates, although it must be conceded that occasionally a convention nomination was given to a man who would not run the gauntlet of the primary. On the whole, the process of "deliberation" in a convention tended to produce candidates who were not sufficiently in agreement with the conscience and judgment of the masses of the party; and closer relations between the people and their representatives are just at present much desired.

In reply to the final question whether the new primary system is superior to the old, there is a variety of responses. There are some authorities who contend that the direct primary is, in reality, no advance over the convention method. Mr. Henry Jones Ford[1] declares that "it is a case of change without improvement," that it merely duplicates elections and "intensifies party demands for subsistence." Mr. F. W. Dallinger[2] of Massachusetts thinks "it may be as good" as other delegate systems. Other keen observers take a more favorable view of the situation. Professor Macy is of the opinion that the direct primary has a great educative value and

[1] Author of *Rise and Growth of American Politics.*

[2] Author of a study of *Nomination for Elective Office* (1897).

that it makes control by vested interests more difficult than under the old system.[1] Mr. E. C. Meyer, who has studied carefully the subject of direct primaries is an enthusiastic advocate of the plan.[2] Professor Anderson of Minnesota says that the direct primary gives better officers; increases the responsibility of the organization and of the voter; and increases the independent vote. Others declare that the direct vote brings about greater responsibility on the part of the organization, and tends to make the rulers more responsive to the will of the ruled. It "creates a consciousness of popular control;" it "acts as a referendum;" it "restrains the ring." There is much testimony to the effect that the primary has a restraining and subduing influence upon the ruling authorities, and tends to elevate in importance the will of the voter in the party. It may not and probably will not destroy the slate, but it provides for responsible slate-makers. The slate, when made, is referred to the people, and may be rejected in whole or in part in favor of a superior slate. Under the convention system the whole slate was seldom made public, although parts of it were of course known. Since the slate must be voted upon, some care must be taken to avoid placing upon it a notoriously

[1] Author of *Party Organization and Machinery.*

[2] *Nominating Systems; Wahlamt und Vorwahl in den Vereinigten Staaten.*

unfit candidate. On the other hand, a conspicuously worthy candidate may secure a nomination, if omitted from the organization list.

In many cases the direct primary is likely to take the form of a referendum or a list of candidates proposed by the party managers. The leaders will present a candidate for each office and the verdict of the party voters will indicate the degree of their confidence in the organization officials. Such a plan was presented to members of the Republican Committee of Cook County in 1902 by Professor Judson of the University of Chicago, but was not adopted. A similar plan was advocated by Dr. Robert H. Whitten in the same year.[1] Although comparatively little attention was given to these proposals at the time, the course of recent events indicates that a system much like this is likely to develop out of the direct primary.

It would be possible for party managers, however, to withhold the slate until the last moment for filing, and so, unless other nominations were made in advance, prevent a referendum.

So far as its tendencies have been made evident, the direct primary has justified neither the lamentations of its enemies nor the prophecies of its friends. It has not "destroyed the party;" nor has it "smashed the ring." It has not resulted in racial and geographic

[1] *Municipal Affairs*, VI, 180.

cal discriminations, nor has it automatically produced the ideal candidate. Some "bosses" are wondering why they feared the law; and some "reformers" are wondering why they favored it.[1] The wiser ones in both camps are endeavoring to readjust themselves to the new conditions. Public sentiment generally favors the new system, and there is no disposition, except among a few reactionary Bourbons, to return to the old régime.

[1] The first experience with the non-partisan primaries in Des Moines and Cedar Rapids, Iowa, did not produce the results expected. This was particularly true in Des Moines where the candidates approved by the friends of the Des Moines plan did not meet with general favor. In the final election, none of these candidates was chosen. On the other hand, many of the voters seem to have resented the presentation of a "slate" of candidates by the friends of the "plan," and the tactics followed in the campaign. In Cedar Rapids the ballot battle was fought out upon race lines, and the election was a contest between the all-American ticket and the Bohemian ticket. As a leading paper of the city says: "We are reminded that politics is still a great game." The following comment on the Des Moines situation is excellent:

"It may be said in passing that the defeat of the so-called 'Des Moines plan' candidates was largely due to the fact that their supporters overdid the thing. In their effort to make it appear that the new government was to be so vast an improvement on the old, it was the fashion to slur and belittle those connected with the old government. Judge Mathis was especially the victim of this sort of abuse, and the voters resented it, as they often do. The people like fair play. This and the odious name of "slate" attached to the Des Moines plan ticket is chiefly responsible for its overthrow."—*Iowa City Press.*

CHAPTER VIII

SUMMARY AND CONCLUSIONS

In surveying the field of primary legislation, certain broad tendencies are evident. The most obvious feature of the whole movement is the gradual regulation by law of the affairs of what was originally regarded as a purely voluntary association. Step by step the advance has been made until the party is now completely encompassed by legal restriction. From the optional statutes, first respectfully tendered the party, the legislatures advanced to the passage of mandatory and compulsory acts, when requested by special localities. From local laws of this type the legislatures went on to cover entire states with a network of regulations, which now completely envelops the party. Beginning by forbidding a few of the more obvious and flagrant offenses against the orderly conduct of the primaries, the process continued until the application of all the laws governing regular elections was finally reached. The New York and California laws of 1866, compared with the New York law of 1898 and the California law of 1897, illustrate clearly the progress of the regulating movement. The necessity of additional safeguards was demonstrated in one case after another, until finally the caucus was transformed

literally into a primary *election*. In the southern states generally, however, and in some of the northern states, this process is not yet completed. The southern system still permits party control and management of the party elections within certain limits fixed by the law.

But the primary movement did not stop with legal regulation of the party election. The next stage in the development was the substitution of the direct for the indirect method of nomination—the abolition of the convention system of selecting candidates and the substitution of direct popular choice. Originally the convention system had been regarded as a triumph of the democracy over the privileged few; it had signified the triumph of responsible representation over irresponsible and self-constituted leaders. Now, however, the convention was looked upon as the tool of selfish interests, largely unrepresentative of the rank and file of the party, and only imperfectly responsive to the popular will.

So swift was the advance of public opinion that even before the process of regulating delegate primaries was completed, the abolition of the convention system was demanded. The general confusion of the evils properly attributable only to the unregulated convention plan with those inherent even in the regulated system, tended to heighten the clamor

against the delegate scheme, and hastened the advent of the direct primary. Indeed some states, such as Illinois, Iowa, and Pennsylvania, passed almost directly from the unregulated convention system to the completely controlled direct nomination system. More commonly, however, a state passed through several stages of development, beginning with the prohibition of fraud and force in primaries, extending to the regulation of the nominating machinery, and next advancing to the direct primary election, as in Michigan, Oregon, Minnesota, and elsewhere.

On the whole, within this field of direct primary legislation, the same method of advance is as evident as in that of primary regulation. There was the same transition from optional to mandatory law, from the local act to one of general application, from private to public management and control. The same exception must be made in the southern states, where much broader powers of regulation are retained by the party authorities than is the case in the North, and indeed where direct nominations are made in many instances entirely under party rules.

Finally, there is discernible a powerful movement in favor of nomination by petition only, as a substitute both for the convention system and for the direct primary. Advocates of this system regard the direct primary as particularly inadequate for the needs of municipalities, in view of the necessity of non-

partisanship in such elections and the elimination of national politics from local elections. Thus far there has been no demand for the extension of this system to a field broader than that of local elections.

The forty years of primary legislation may be summarized as follows. Starting with unregulated primaries, the advance was made to the prohibition of flagrant offenses such as bribery and illegal voting, or to optional legal regulation and control; then to compulsory regulation; then on to the abolition of the convention system, and the establishment of the direct primary; and finally we encounter the demand for the preliminary non-partisan primary as in Iowa, and for the adoption of a system of nomination by petition only, as in Wisconsin.

Having considered the development of primary systems, it is now proposed to discuss some of the more important problems arising in the application of direct primary laws. It is desirable to examine critically the various aspects of primary regulation with a view of determining the relative merits of the alternative methods. After the direct primary principle is agreed upon, certain questions arise in respect to various features of the plan. For example, when shall primaries be held? What shall be the form of the ballot? What majority shall be required for nomination? How shall the party platform be formulated? What shall be the relation of the primary

to the choice of national political agencies, such as delegates to national convention, presidential electors, and United States senators? These points will be briefly passed in review, and an effort will be made to ascertain what is sound policy in each case.

The time of holding primaries, although at first thought it might seem somewhat immaterial, is a question of no little importance. In general, the period between the primary and the election is too extended. Where a spring primary precedes a fall election, anomalous situations may arise. For example, a member of the national House may begin his campaign for renomination before he has taken his seat for the term to which he had been elected, thus completely overturning the theory of responsibility for official conduct at the expiration of the term for which chosen. In many other instances where there are short terms of office, an early primary necessitates a campaign for renomination before the incumbent is fairly established in his position, before any policy can be put into execution, and before the public can properly pass judgment upon the candidate. A spring primary emphasizes this danger. It also involves two widely separated campaigns on the part of the candidate—one for the nomination and one for the election.

On the other hand, a midsummer primary is unwelcome in the country, since it breaks into the busiest

season of the year. To the urban district such a campaign is ill adapted because of the inroads made by the summer holiday, and because of the general discomfort of city campaigning in hot weather. In neither rural nor urban districts will a summer primary arouse the fullest public interest, and hence one of the main objects of the movement is defeated.

Too short a period between primary and election is opposed by many, however, on the ground that the animosities engendered in the fight for the nomination are not given time to subside before the battle for election begins. A longer time, it is argued, affords a better opportunity for the adjustment of factional grievances and the operation of the "harmonizing" process that is favorable to party success. This is a favorite argument of organization leaders who fear the effect of the criticism and bitterness of the primary campaign upon the candidate's prospects in the election.

On the whole, however, the public interest requires a brief campaign. The heavy outlay, the business loss, the great physical strain upon the active candidate, all point in the direction of a reasonably short period covering both primary and election campaign. It is well, too, that the facts developed in the campaign for nomination should be fresh in the mind of the people at election time. The September primary for the fall election and the February pri-

mary for the spring election seem to give adequate time for purposes of public discussion and debate. When national conventions are held the primaries must be fixed at a different date, if national nominations are to be made in June or July, as the importance of the presidential election seems to require. In such cases, separate primaries may be held in the same year for state and national purposes.

Where a primary is held a short time before the election, it is possible to conduct the registration and the primary simultaneously, but if persons newly registered are permitted to vote in the primaries on the same day, there is no opportunity for verifying the lists and purging them of illegal voters. This opens the way for fraud on an extensive scale and leaves the ballot less completely safeguarded than in the general election. In the larger cities the combination of registration and election is, therefore, undesirable; in fact, a supplementary registration should precede the election.

Whatever the exact time fixed for the primary, it is now generally agreed that it is desirable to hold concurrent primaries. The same election officials may be used to conduct the primaries of all parties with a considerable saving to the public purse, while there is a certain psychological as well as a physical advantage in having a definite point around which all election activities center. With complete legal

regulation of the primary process, primary day becomes as much a feature of the political year as the election day. There is one disadvantage inherent in the concurrent primaries, namely, that weak spots in a party ticket cannot be met by strong nominations for these offices by a party acting at a later date. On the other hand, it may be said that since no such strategic advantage is possible, each party will be put on its mettle and will be inclined to place in the field strong candidates for each office to be filled.

In nearly all instances it has been found desirable to place the names of candidates upon the ballot only upon the petition of a certain number of members of a particular party. Originally a considerable number of signatures was required, upon the theory that the ballot must not be unduly burdened with names. A petition signed by 5 per cent. of the voters of the party at the last preceding election was not uncommonly required. Broader experience has shown, however, that these figures were unnecessarily high. The securing of a large petition is an expensive task unless the candidate commands the service of a strong organization. Hence the requirement of a large number of signatures operates in favor of the machine candidate or of the wealthy candidate, who has ample funds to expend in securing signatures, rather than to the advantage of the general public. This has been recognized by recent laws in which

the number of signatures is limited to a specified percentage or figure. In Illinois petitions for nomination for state office must be signed by not less than 1,000 nor more than 2,000 primary electors. In Wisconsin it is not permitted to file a petition containing a number of signatures larger than the legal figure, and names in excess of the limit fixed by the law will not be filed. In this way expensive competition by the candidates for signatures in advance of a primary is prevented, and the man with the active organization or the large fortune is not able to exploit these advantages for campaign purposes.

In other cases, the canvass for signatures before the fixed time, previous to the primary, is forbidden by the law. This regulation is designed to prevent the opening of hostilities at too early a date. It is a common practice to secure signatures to petitions months in advance of the primary and in this way to obtain what are sometimes regarded as pledges from citizens who, after hearing the campaign discussion, might be otherwise minded. But such a measure is difficult to enforce, unless it is required that signatures be obtained only upon legal blanks; and, if only a few signatures are required, time limits are unnecessary.

Whether, in addition to the petition, a fee shall be required is a question upon which there is some difference of opinion. At the beginning of the

primary legislation movement, and still to a considerable extent in the South, the cost of the primary is imposed upon the candidates themselves and they are assessed to meet the expense. In many states this practice of requiring a fee is still found, although, as already shown, the courts in several cases have declared such measures to be unconstitutional. There seems to be no sound reason why the primary election, which is fundamentally a matter of public concern, should be regarded as an event in which individual candidates are chiefly interested. Indeed, it would be much more reasonable to grant the candidate a sum of money for the purpose of conducting his campaign than to require from him a fee to defray primary expenses. Fees are defensible therefore, only as regulations designed to show good faith on the part of the candidate and to prevent malicious overcrowding of the ballot, and, on the whole, are undesirable.

The style of the ballot is not uniform in the different primary systems. In some states names are arranged alphabetically; in others in the order in which nominating petitions are filed; and in still others the order is changed as many times as there are candidates for the particular office. Objection is sometimes made to the alphabetical order on the ground that the candidate whose name appears first on the list has an unfair advantage over the candidate

whose name is printed lower down or last. For example, Andrews, if placed first on the list for nomination for sheriff, is likely to receive votes solely by virtue of his position; while Zeller, at the foot of the list, loses votes on that account. Where there are many offices to be filled and where there are many aspirants for each office, it is contended that the leading names possess a distinct and appreciable advantage. If any such unfairness is seriously feared, it may be obviated by providing that the order of arrangement should rotate. For example, if there are five candidates for sheriff, A, B, C, D, and E, the order of printing may be changed in such a way that the name of each of these candidates shall appear first an approximately equal number of times. In this somewhat cumbrous fashion the alphabetical advantage may be eliminated. Arrangement in accordance with the time of filing nomination petitions is wholly arbitrary and the least desirable of any of the systems mentioned. On the whole, there seems to be no very strong objection to placing candidates on the ballot in the alphabetical order of surnames.

As the party primary becomes more and more like an election, the more important does the question of party membership become. What constitutes a Republican or a Democrat? and how shall a satisfactory legal test be made? Originally this was a matter over which the party authorities possessed

exclusive jurisdiction, and which they might regulate and control in their discretion. The Republican committee decided what evidence was necessary to establish a right to participate in Republican primaries, and the Democratic committee defined and determined the essentials of Democracy. The abuse of this power in many cases led to legal regulation of the party. The most frequent test required is an expression of intention to support the party candidates in the ensuing election, coupled with a statement of past support of, or affiliation with, the party. In Michigan the test includes a declaration of sympathy with the objects of the party.[1] In New Jersey, the voter must state that he supported a majority of the party's candidates at the last election, and intends to support the candidates named in the primary.[2] South Dakota requires previous support of the party, belief in a "substantial part" of principles of the party, and intention to support the candidates nominated.[3] Pennsylvania requires a declaration that the intending voter supported a majority of the party's candidates at the last election.[4] The Missouri law of 1901 merely required that the voter answer affirmatively the question

Are you a ——?[5]

[1] Chap. v, sec. 9, 1905. [2] N. J., 1903, chap. 248.

[3] South Dakota, 1905, chap. 107.

[4] Pennsylvania, 1906, chap. 10, sec. 10.

[5] Missouri, 1901, p. 149, sec. 18.

In some cases an attempt is made to bar those who have already signed a nominating petition, or vice versa, to prevent those participating in a primary from subsequently signing a petition. In Rhode Island[1] it is provided that no person shall be entitled to vote "who shall have signed nomination papers of candidates for any elective office to be voted for at the same election as that for which such caucus is being held;" and also that names of those who have participated in any party primary within 90 days shall not be included in the number necessary to place a name upon the ballot by petition. A similar clause was contained in the Illinois law of 1906, preventing any one from participating in a primary after having signed a petition of another party or of an independent candidate, or from signing a petition after having taken part in a primary.[2] Like provisions are found in other states.

In the southern states, the general practice is still to leave the determination of the party test to the party officers, although the present tendency is somewhat away from this. A minimum requirement may be embodied in the law, but the party is permitted to add to this in its discretion.[3] The Mis-

[1] 1899, 662, sec. 11.

[2] 1906, p. 450, sec. 33; Louisiana, 1900, chap. 33, sec. 15; Minnesota, 1903, chap. 90.

[3] See Tennessee, 1901, chap. 39; Louisiana, 1906, chap. 49. This results, in some instances, in the exclusion of negroes.

sissippi law of 1902 requires the voters to declare that they intend to support the nominations in which they participate, have participated with the political party holding the primary within the two years preceding, and are not excluded from such primary by regulations of the party state executive committee.[1] In Louisiana the voter must declare whether or no he is a member of "such political party" and whether he will support the nominees of said primary election.[2] In the act of 1900 the voters were required to declare that they would not accept appointment from any other party within four years. But additional qualifications may be required by the state central committee. In Florida, however, the party authorities are given complete power to prescribe the terms upon which voters may participate in the primaries, and in no southern state during this period has the party been deprived of the power to exclude undesirable persons from the primary. The law has laid down minimum requirements, but permitted the party to make its own maximum.

As the question of party suffrage has occupied the attention of legislators for the last ten years, so the registration of party voters has become one of great

[1] Mississippi, 1902, chap. 66, sec. 9.

[2] Louisiana, 1900, chap. 133; 1906, chap. 49, sec. 10. No one participating in a primary is allowed to be a "candidate in opposition to any one nominated at or through a primary election in which he took part" (sec. 27).

interest. Starting with no lists at all, advancing to informal party lists, then on to the regular registration books used in the general elections, we find in the latest period the system of party registration introduced. A number of states have provided for such a system: Kentucky in 1892; New York in 1898; Nebraska in 1899; South Carolina in 1900; North Carolina and Connecticut in 1901; Maine and New Jersey in 1903; Iowa, Oregon and Vermont in 1904; and Michigan in 1905 are among the number. The character of these provisions is much the same in all states. At the time of registration the voter is given an opportunity of declaring his party affiliation, if any, which is then indicated in a column of the registry book. A list of party voters is then made up from these preferences, and this serves as the registry list for the ensuing primary election. In New York the declaration of affiliation is secret and the names are not disclosed until after the general election, when the lists are thrown open, and in New York City are printed. In such laws, provision is made for transfer of enrolment from one district to another upon change of residence; and in New York for a number of years a supplementary enrolment was provided.

In a very few instances during this period, the party test has been abolished altogether. The California law of 1899 contained a provision which

enabled the voter to cast a ballot for either party, without divulging his party preference. This clause was subsequently declared unconstitutional, however.[1] A similar provision was contained in the Oregon law of 1901, which was also declared unconstitutional. The Minnesota law of 1899, provided for the open primary, but in 1901 this feature was abandoned. In the Wisconsin law of 1903, absolute secrecy of the ballot is secured, and the voter may vote for candidates of whichever party he may choose. Of course, he cannot vote with both parties at the same time.[2]

It is urged in favor of this plan that it protects the secrecy of the ballot; that it makes intimidation or undue influence impossible; that the requirement of a partisan test is both unnecessary and useless; and that the test of allegiance excludes only the honest citizen, while admitting the dishonest and corrupt. It is objected, however, that without some sort of party test, the responsibility of the party for the character of the nominations made or of the platform adopted is entirely broken down. Members of the Republican party may assist in the nomination of weak Democrats, or vice versa; and unscrupulous

[1] See Britton *v.* Board of Election Commissioners, 61 *Pac. Rep.*, 1115 (1900).

[2] Where the commission plan of government is adopted in Iowa, a non-partisan primary is provided (Iowa, 1907, chap. 48; see also Wisconsin, 1907, chap. 670).

leaders may readily transfer blocks of voters without regard to party lines. When a corrupt machine is threatened by the nomination of an aggressive reformer, it is possible to avert this menace by the use of available members of the other machine. In these ways, it is held, the responsibility of the party may be completely destroyed, or, at any rate, seriously crippled, and reform movements may be made more difficult.

On the whole, if any test is required, it would seem sufficient to exact from the voter a statement that he is in general sympathy with the principles of the party, that he intends to support its candidates generally at the next election, and that he has not participated in the primaries of any other party (except a municipal party) within, say, one year. The system of party enrolment or registration is likely to eliminate a desirable element from each party, and seems to lay undue stress on the rigidity of party organization, although this may be to some extent offset by liberal provisions for supplementary enrolment or change of party registration. The chief objections to this system would then disappear; but also its chief merit, namely, that of keeping out the unwelcome and unscrupulous invaders of the party. This illustrates very well the inherent difficulty in all tests, namely, that of letting down the bars for the honest, discriminating voter without admitting,

at the same time, the dishonest and the venal. It appears, then, that no solution of the problem of the party test has yet been reached, and that much more practical experience and much more mature reflection will be necessary before the proper sort of a regulation can be devised.

In framing direct primary laws, an important problem arises in connection with the formation of the party platform. In local areas, where direct primaries have chiefly been tried and where differences in principle are rare, the question of the platform has not occasioned serious trouble. In larger districts, like states, however, the question becomes more important, for, although distinct state issues are not so common as state campaigns, there are occasionally serious divisions of opinion in state elections and for such emergencies provision must be made in the law.

Several answers have been given. In Wisconsin provision is made for the formation of a state platform by a candidates' convention. This body is made up of all the party candidates for state office and for the legislature, and the party's hold-over members of the state senate. In this way members both of the legislative and the executive departments may be committed to a definite party policy, and this party policy formally presented as the platform.

[1] 1903, chap. 451.

In Missouri the law provides for the formulation of the platform by the state central committee acting with the party nominees for state office, for congress, and for the legislature.[1] In Kansas, and North Dakota a similar method is followed. In Texas another plan is provided.[2] On petition of 10 per cent. of the party voters, any question of policy must be submitted to the voters of the state at the primary, and, if approved by a majority, becomes a part of the platform of the party. It is also provided that no convention shall place in the platform or resolutions of the party it represents any demand for specific legislation on any subject, unless the demand for such specific legislation shall have been submitted to a direct vote of the people, and shall have been indorsed by a majority vote of all the votes cast in the primary election of each party. In the Oregon law, express provision is made for declaration by the candidate of the principles upon which he stands in not exceeding one hundred words and twelve words are permitted to be printed upon the ballot.[3] But

[1] 1907, p. 263.

[2] See Nebraska (1907), chap. 52, sec. 35.

[3] "If I am nominated and elected, I will, during my term of office (here the candidate, in not exceeding one hundred words, may state any measure or principle he especially advocates and the form in which he wishes it printed after his name on the nomination ballot, in not exceeding twelve words)."—1904, sec. 12.

where no legal provision is made for such a declaration upon the ballot, the candidate may of course make such a statement the basis of his campaign.

The shaping of the platform by the candidate seems, all things considered, best fitted to survive. Where there is a serious difference of opinions as to policies, the platform is likely under any system to be shaped by the dominant group and will be practically the programme outlined by this faction in its fight before the primary election. Generally such issues are as clearly and as sincerely defined during the primary as they would be in the platform framed by the convention, for it should not be forgotten that the average party platform is verbose and perfunctory and often serves no real purpose, since the elections are usually conducted upon the basis of national issues. Where there is no living issue of a local character, the lack of a platform is not serious.

In case definite machinery is provided, the Wisconsin plan seems to possess some merit. The party programme is made, under this system, by those who, if elected, are to carry it out; and the majority might reasonably be held to bind the minority. The platform is made after the candidates are chosen, however, and in case of an unwilling candidate, there would be no effective way of securing acquiescence in the programme, either before or after the election. As compared with a platform framed either wholly or

in part by the party committee, the candidate convention is far superior. Party committeemen are chosen to manage campaigns and conduct organization business, and not because of their opinions upon questions of public policy.

Under a system which provides for the selection of candidates by direct vote, the percentage of the total vote necessary for a choice is a subject of considerable importance. The common plan throughout the North and West is to require merely a plurality vote. The candidate receiving the highest number of votes is made the nominee. In the southern states a clear majority is usually required and when no candidate receives the necessary vote, a second primary is held, in which the two leading candidates participate.[1] As another alternative, it may be provided, as in Illinois (1905), that in case no candidate receives a majority or in other cases a minimum percentage of all the votes cast, a convention shall then make the selection.[2]

Finally, a system of preferential voting has been advocated. Under this plan, the voter indicates his first and second choices for the office and, in case no candidate receives a majority of first choices, the

[1] See also Michigan (1905), chap. 476; special acts.

[2] Applied to county offices (1905, p. 227); in North Dakota, 1907, no nomination is made unless the total vote cast for candidates for a given office equals 30 per cent. of the total party vote for secretary of state at the last election.

lowest candidate is dropped and his second choices are then distributed.[1]

In the South the second primary, necessitated by the requirements of a majority for nomination, occasions no particular difficulty and the system appears to work very well. As there is really but one party and as the regular election is generally perfunctory, the second primary is usually well attended. In fact, this second primary, when held, is in reality the election. In other sections of the country, where the party system is in vogue, it is not likely that the second primary is practicable. The number of elections is already so great that an additional primary would probably be poorly attended and the results unsatisfactory. The difficulty of securing a full and representative vote is already so formidable that no new complication should be added. In many instances, the second primary would involve the holding of two primaries and an election in the spring, followed by two primaries and an election in the fall; —a situation which seems to favor the professional politician, rather than the general public.

Choice by convention, in case no candidate receives a majority, is a compromise favored by those who believe that in this way the advantages both of the

[1] In Alpena County, Michigan, if no candidate receives 25 per cent. of the vote, a second primary is held (1905, chap. 476, special acts).

direct vote and of the delegate system may be retained. Where there is a strong sentiment in favor of any candidate, it is argued, he will be nominated, while the advantage of the deliberative body or convention will be preserved. On the other hand, it may happen that a candidate will fall slightly short of the necessary majority of the popular vote, and, although far in the lead of his nearest competitor, secure relatively few delegates, and fail to be chosen by the convention. The experience of Illinois with this system is conclusive. There is also danger that candidates may be presented with the deliberate purpose of so splitting up the vote that none of them will receive a majority, and that the choice will consequently devolve upon the convention.

The preferential system is designed to obviate the necessity for a second ballot, and at the same time to prevent the choice of a candidate by plurality only. It is also intended to meet cases where a majority as to a policy is divided as to a candidate, and is likely to be overridden by a minority united on a single candidate. Thus an "anti-machine" group may muster 50,000 votes as against 30,000 "machine" supporters, but if the reform votes are divided between the two candidates, the solid vote of the "organization" will place the candidate of that faction in nomination. The preferential system is somewhat complicated, however, especially where

two or more candidates must be selected for the same grade of office,[1] and is not likely, on this account, to win very general favor. The ballot is still somewhat of a mystery to many voters, and additional requirements are not likely to meet with general favor. It seems likely that the public will accept the plurality system, before it is reconciled to the complications of the preferential plan.

A plurality system may at times embarrass a reform movement which possesses more candidates than the "machine," but the preferential system would enable the opposition to work mischief in the distribution of second choices. Rivalry and jealousy might easily be fostered and choice actually made between two promising reformers by the machine. If, for example, A, the machine candidate, has 3,000 votes, and B and C, reform candidates, 4,000 each, the second choices of the machine group might nominate either B or C.

The most common method of nomination is the choice by simple plurality vote. This is the ordinary method outside of the southern states, and, in general, has proven satisfactory where employed. The objection frequently urged is that it makes possible the choice of a candidate by a small faction of the party decidedly in the minority. If there are six

[1] Nomination of representatives in Illinois, aldermen in Boston, etc.

candidates, for example, and the vote is somewhat evenly divided, it is possible that the highest candidate may receive not more than 17 per cent. of the total vote cast. Thus 17,000 votes out of 100,000 might choose the party candidate. In short, the argument is that there is not a sufficient guarantee that the successful candidate really commands sufficient general support in the party to warrant his choice as its representative. Where the system has actually been employed, however, these objections are not generally held. In practice the result of the primary is accepted by the several contestants with as good grace in the case of a plurality as of a majority. The number of candidates is, as a rule, not so great as might be expected, and, where any really important issue is involved, the list is likely to be narrowed down to two. Where there is no overshadowing issue and the sole question involved is the personality of the candidates, a plurality nomination need not arouse any antagonism or division in the party.

A modification of the plurality system is the minimum percentage plan now used in Michigan where 40 per cent. is required for governor and lieutenant-governor, in Iowa where 35 per cent. is necessary to a choice, and in South Dakota where 30 per cent. is requisite. In these cases, nomination by convention is the alternative. This plan is open to the same objections that apply to the majority scheme,

namely, the possibility that the leading candidate at the polls may be beaten in the convention; and that dummy candidates may be put up for the purpose of so dividing the vote that choice must be made by the delegates. The lower the percentage, however, the less is the likelihood that choice will not be made by the voters in the primary and the less the opportunity for such maneuvers.

On the whole, it seems probable that the simple plurality will be adopted outside of the southern states, where peculiar conditions prevail. Experience has shown that this is a satisfactory system, and that it neither destroys nor disrupts the party. The demand for a majority primary or a minimum percentage is generally based on unfounded apprehension, rather than upon reason or experience. It ignores the fact that the number of candidates under the direct primary system is not ordinarily great, and that where the number is large custom soon teaches acquiescence in the nomination of the leading candidate in the primary, just as it does in the general election. Originally choice by majority vote only was the general rule, even in elections, but now a plurality is accepted and indeed never challenged. It is likely that the same process of development will take place in the party primary.

The relation of the direct primary to national elections has recently aroused considerable interest and has opened a new field of controversy. The

choice of members of the House of Representatives, of the United States Senate, of presidential electors, and of delegates to national conventions, is affected by the primary movement. Selection of members of the lower house has ordinarily been provided for in direct primary laws without much discussion. In a number of states the primary law requires the nomination of senators in the party primary, and provides for pledging the candidates for the state legislature to abide by the result of this vote. Following this, there may or may not be an election in which the party candidates, so chosen, contest. This situation presents serious difficulties, involved in binding the legislator to vote for the candidate of his party who receives the highest vote, not merely in his district, but throughout the state; and secondly, of supporting the candidate receiving the highest vote in the general election.[1]

The choice of presidential electors has been a subject of some discussion, especially with reference to the states where the number chosen is very large. In New York, for example, 39 electors must be named; in Pennsylvania 34; in Illinois 27. In many cases the choice of electors has been left to a convention. As all but two of these candidates for these offices may be nominated by districts, however, the question is not really a serious one.

The selection of delegates to the national nominat-

[1] See Haynes, *Election of Senators*, p. 152.

ing convention by direct vote is wholly feasible, unless the national convention itself should require such choices to be made by convention only and should refuse to seat delegates selected in any other way. The action of the national committees and conventions of 1908 has indicated, however, that this course will not be adopted, even in the Republican party where the regulation of the choice of delegates is most rigid. The Wisconsin and Pennsylvania laws definitely provide for the choice of delegates to conventions by direct vote, and it seems probable that this method will be generally adopted throughout the country. The next step would be a provision for a preferential vote on the question of presidential nomination, with the understanding that the delegates selected should be bound by this vote. Whether the direct vote system will be carried so far as to provide for the choice of president by popular vote of the entire party is problematical. It seems likely, however, that in the near future all states will choose their delegates to the national convention by direct primary, and that these delegates will be instructed by the popular vote of the state or district upon the question of presidential nomination.[1]

[1] Incidentally, this may have the effect of attracting attention to the grossly unrepresentative character of the national conventions. These bodies are not based upon party strength and do not represent their respective parties, but stand for population, regardless of party affiliation. In the Republican party this

If a vote on the candidates for presidential nomination is taken in each state or district, the numerical strength of each candidate will be known. Under such circumstances the nomination of a minority candidate, even though he might possess a majority of the delegates, would be exceedingly unpopular and politically inexpedient. Hence the tendency will inevitably be toward accepting the popular vote on the question of a party nomination for president as decisive. This may be checked by a consideration of the federal character of the national government, and the fact that electors are chosen by states rather than by popular vote of the country at large. Although little discussed at the present time, it is clear that this must very soon become a subject of great importance and public interest, and that significant developments of theory and practice may be expected in this field.

In recent years the primary laws of many states

results in rank injustice to the strong Republican states. Mississippi, for example, which cast in 1904, 3,168 votes for the Republican candidate, had 20 votes in the national convention of 1908, while Minnesota, which cast 216,651, had only 22. (See *Proceedings* of the Republican National Conventions of 1900 and 1908.) Attempts have been made repeatedly to readjust this inequitable system of representation, but so far without effect. Some scheme, such as that suggested from time to time in the Republican conventions, providing that each state should have four delegates and one for each 10,000 votes cast for the party candidate at the last election, would insure a far more representative body than now assembles in the national convention.

have covered the election of party officers as well as the nomination of party candidates. Indeed, practically all recent laws provide for the choice of party committeemen by direct vote of the party in the primary. In many instances the number of members, the term of office, and the powers of the committee are specified by the legislative body. The purpose of this regulation is to insure a greater degree of responsibility on the part of the officials to the body of the voters, and to facilitate the control of the organization by those whom the organization represents. Under the old system, the party officer was chosen at an election of delegates who were to choose candidates. Either proper attention was not given to the candidates for public office, or else too little notice was paid to the respective merits of the candidates for party office.

The direct choice of party officers by the party electorate cannot be regarded otherwise than as a necessary step in the direction of popular control over party agents who have been in too many cases wholly unrepresentative of their principals. That this broad democratic movement will continue there can be little or no question, and its spread over all the states is only a question of a brief time.

In the nominating field there are three chief competitors, namely, the convention system, the direct primary, and nomination by petition. There are

also a number of mixed types. The respective merits of the principal systems will now be considered briefly.

Whatever the advantages, theoretical or practical, of the convention system, its doom is clearly written. The limitation of the voter to the choice of one leading candidate, the manipulation of representatives chosen, the opportunities for trading and jobbery, the undeliberative character of the convention, all have combined to make the system, as now known and practiced, intensely unpopular and incapable of long duration. Originally the weapon of the many against the few, it has become, in only too many cases, the defense of the few against the many. Once the foe of aristocracy, it now stands in the way of democracy and must move aside. No defense that can be made for it at this late hour is likely to prove effective against the assaults of its foes. In fact, the stubborn and mistaken advocacy of the system in various states by a certain type of party leader has alone cost the system much opposition.

There can be little doubt that the direct primary system will continue to progress, supplanting the convention method, until ultimately it covers the whole group of states. The direct primary system promises popular control of the nominating machinery, and the overthrow and expulsion of the party boss. It promises to drive out oligarchy or autocracy, and to

introduce democracy into the party system. Upon this promise a desperate political constituency relies. Whether all the results depicted by the advocates of the system will actually follow, there may be serious doubt. But its chief opponents have been men who failed to take a broad view of the political field, and their motives and their arguments have not been taken seriously by the people. Their fear that party organization might be destroyed has been construed as apprehension that certain holders of power might be displaced under the new system. Monstrous abuses have arisen under the convention system and whether or not the direct primary can perform all that its advocates promise, there can be little question that the people of the United States are disposed to give it a fair trial and will undertake the experiment without much further delay.

A more serious problem is presented by the relation between the direct primary and the system of nomination by petition only.[1] In elections where it is desirable to separate as far as possible national

[1] See Horace E. Deming, "The Fundamental Principles Underlying Proposed Municipal Nominating Law," *Proceedings of National Municipal League for 1904*, p. 337, and draft of this law prepared by committee of the National Municipal League; Clinton R. Woodruff, "The Unsatisfactory Character of Present Methods of Nomination to Municipal Elective Office," *Proceedings of National Municipal League for 1904*, p. 366; and "The Requisites of a Municipal Nominating Law," *ibid.* (1905), p. 366.

and local issues, there are reasons why the direct primary may not be the most practicable system. No matter what the nominating system may be, if it is a party system, partisan politics are thrust upon the electorate and argument upon national issues is almost inevitable. Party primaries and non-partisan elections do not harmonize, and are, in fact, mutually exclusive. The direct primary seems, therefore, to emphasize the national party in local politics and the continuance of the well-known evils that have heretofore accompanied that system in our American cities.[1]

This was well stated by Mr. Walter Fisher when he declared, in an address before the Chicago Charter Convention in 1907:

> You cannot, by any possibility, successfully operate a party which is organized on national and state lines, and fit that party to a municipal election. It never has been done, and it never will be done. The lines of cleavage of the different parties are different. The lines upon which they are agreed in national and state elections are not the lines governing the municipal election.

Nomination by petition only would render party choices, as such, impossible. It would be possible, however, for a party to hold an informal convention, nominate its candidates, and place them upon the

[1] Wisconsin has provided (1907, chap. 666) that in cities of the fourth class, primaries shall not be held except upon petition of 25 per cent. of the electors.

ballot by the petition process. But the party circle, column, and designation would no longer appear upon the ballot. The nominees could have only such advantages as the prestige of choice by party leaders might carry with it, and allegiance of the mass of the party voters would not be so confidently demanded or so easily secured.

On the other hand, the legal protection of the nominating process would be totally destroyed, and, if nominations actually were made by parties, there would be no legal guaranty of an orderly process. If it should turn out that nominations were actually made by a party boss, the net result would be the destruction of the safeguards that have been built up by forty years of primary legislation. So far as cities are concerned, then, the question involved is whether the greater advantage lies with the direct primary or with the elimination of legally regulated party nominations.[1]

A primary law should always leave the city the right to choose either the direct nominating system or nomination by petition, and if the latter is adopted the plan of permitting a preliminary election for the purpose of choosing two candidates for each office

[1] See the discussion on "Partisanship in Municipal Politics," by Charles J. Bonaparte, in *Proceedings of National Municipal League* (1904), p. 71; and "The Evil Influence of National Parties and Issues in Municipal Elections," by Brand Whitlock, *ibid.* (1907), p. 193.

is worthy of careful trial.[1] In the choice of educational and judicial officers, nomination by petition only presents possibilities worthy of very serious consideration, and in the case of school officers is already in use in several places.

A study of primary election legislation shows that the desired results cannot be obtained until other and important political changes have been made. Unless primary laws are accompanied or followed by other developments of the political situation, comparatively little will result from the movement. No friend of direct nomination should indulge the pleasant dream that the adoption of a law providing for such a system will, of itself, act as a cure for all the present-day party evils. Disillusionment and discouragement are certain to follow in the wake of any campaign conducted on such a theory. It is necessary to understand that the political conditions are far too serious and far too complicated to be cured by so simple a specific.

In the first place, it is not likely that the direct nominating system will achieve its full results until the number of elective officers is materially reduced. Where thirty or forty offices are to be filled at one primary, it is not probable that an intelligent choice will be made from the great number of candidates presented. The variety of qualifications required

[1] See Wisconsin (1907), chap. 660.

for the several offices, the multiplicity of candidates clamoring for recognition, the obscurity of many of these candidates, the possibility of "deals" and "slates," make the likelihood of proper selection somewhat remote. It is not probable the result will be any worse than that obtained under the convention system, but, on the other hand, it is not likely to be very much better in the case of the minor offices.

The reduction of the number of elective offices is not undemocratic, as might perhaps be charged, but is, on the contrary, calculated to give the people more complete control over their own government. To provide for popular choice of a large number of officers does not increase, but, quite the contrary, diminishes their power. As was said in the *Federalist*,

> The countenance of the government may become more democratic; but the soul that animates it will be more oligarchic. The machine will be enlarged, but the fewer, and often the more secret, will be the springs by which its motions are directed.[1]

A great array of elective public offices means control by the few rather than by the many. Amenability to popular control will be better secured by reducing the number of offices, so that the requirements of the candidates for each such position may be carefully scrutinized, and the most intelligent choice be made.

[1] No. 57.

This simplification of the machinery of government may most easily be made by eliminating administrative offices from the elective list. There can be no good reason why such officers as auditor, engineer, and surveyor, should be elective. An auditor must be accurate and honest, and there is no such thing as Republican auditing or Democratic auditing. Nor is there a Republican way, or a Democratic way, or a Prohibitionist way of administering the office of engineer. Certainly there can be no form of surveying that could be characterized as Socialistic or Democratic or Republican.

The true principle is that the people should choose all officers concerned with the formulation of public policies. They need not choose men engaged in the carrying out of policies. Policy-framing or legislation is a matter upon which there may be differences of opinion, and men intrusted with the work of drawing up such plans must be elected by, and be immediately responsible to, the people. Regarding the execution of policies once enacted into law, there is less room for difference of opinion. The making of law is partisan, but the enforcement of law should be non-partisan. Laws should not be administered in a partisan way, but efficiently and justly. Administration requires technical skill, and partisanship is destructive to its best development.

If any administrative offices are to be selected by

popular vote, the number should be confined to the chief executive officers, such as the mayor and the governor. If these officers are chosen by the people and given the duty of selecting and supervising other public servants on the administrative staff, the result is certain to be a higher degree of popular control than is now generally secured. This principle has been established in the federal government from the beginning, is now being adopted in our municipal governments, and few new elective offices are being provided in state and county government. We are coming to realize that what is needed is popular control over policies, with non-partisan, skilled, and permanent administration of these policies. While in London in 1907, I was greatly interested to see that, although the Moderate party in the London County Council had just won a sweeping victory, which placed it in power for the first time in sixteen years, no changes were made in the administration. The offices and committees of the Council were reorganized to give the victorious party the majority necessary to execute its policies, but the public servants whose duty it is to execute the policy of the Council remained undisturbed.

Such a change may be denounced as undemocratic in spirit and tendency, but on second thought it will be seen that instead of weakening popular control over government the result will be to strengthen

that control. A system that imposes upon the electorate the choice of a mass of officials strengthens the hands of partisan or private interests at the expense of the public. With a smaller number of elective officers, the results obtained under the direct primary system would be far more satisfactory than they can be under existing conditions. Public attention could be focused upon a few offices and a few candidates with better prospects than at present for the elimination of the undesirable and the survival of the fittest. Until this is brought about, the success of the direct nominating system must be seriously menaced.

Another essential change is the return to the original form of the Australian ballot.[1] The party emblem, the party circle, and the party column have nothing to do with the Australian ballot, and were engrafted on the system by American legislatures. In adopting the system, secrecy of the ballot was secured, but the party obtained the advantage of arranging party candidates in columns and permitting the voter to select a list of candidates by marking in the party circle. This mechanical arrangement places a premium upon undiscriminating voting, and often results in the election of unworthy and unfit candidates by sheer advantage of position upon the ballot. If the head of the ticket is elected, the others are likely

[1] See Philip L. Allen, "Ballot Laws and Their Workings," *Political Science Quarterly*, XXI, 38.

to be carried along with the leader, regardless of their own merits. Fortunately this plan has not been applied to the conduct of nominating elections, where voting an organization slate with one mark might have worked great damage; but the fact that this practice prevails in the regular elections throws its shadow back over the primaries. The knowledge that candidates, when nominated, will be placed under the protection of the emblem or the circle makes the party, especially in districts where it is strongly in the majority, less careful in its choice of candidates than would otherwise be the case. It is only human nature to be less studious of the public wishes in a situation where a nomination is equivalent to an election, and where defeat even of the unworthy is a remote possibility. Ballot reform is, therefore, a necessary accompaniment of primary reform. The ballot in the regular election should be made up in the same form as the ballot in the primary election, with the party designation placed after the name of the candidate.

Another requisite to the complete success of the direct nominating plan is the further extension and enforcement of the merit system. As long as an army of officials can be thrown into the field in support of a particular "slate," it will be difficult for the candidate, not so supported, to succeed. The odds are too greatly in favor of the regular army against the

unorganized and undisciplined volunteers. Occasionally victory may perch on the banners of the straggling group of reformers and "antis," but habitually will rest upon the side of the well-disciplined army of office-holders. The honest and intelligent application of the merit principle to administrative appointments reduces the number of workers under the control of a faction, and makes the support of the "slate" far less formidable. If the group in power centers around some principle or policy, it will continue to be powerful and effective in the primaries, even under the merit system; but if the chief element of cohesion was public office, it will be far less vigorous than before. Patronage is not only the force that holds an organization together, but it is the strongest single element, and no practical politician is ever guilty of despising the power of appointing men to, and removing them from, office. There are, of course, many exceptions, but the general practice is for the appointing power to control the political activity of the appointee. When the office is obtained by merit, however, and not by favor, this sense of obligation on the part of the officer and of power on the part of the party ruler ceases. Hence the mobilization of an army for effective use in a primary campaign becomes far more difficult, and the opportunities for success on the part of the opposition correspondingly greater. To the extent that the

merit system is not rigidly carried out, the effects, just indicated, do not follow. In any event, it is not to be presumed that civil service reform is a panacea. It is merely a palliative. It will materially help, but cannot be relied upon to accomplish a complete cure for our political ills. The merit system merely abolishes the feudal tenure under which many officers now hold, and the obligations of service incident to that relationship. It will remove one handicap to an even race between candidates for a nomination.

It is a serious question whether public appropriation should not be made to defray a part of the expenses of candidates in primaries.[1] Already in most states all of the cost of the primary election itself is paid from the public treasury. The payment of election judges, the printing and distribution of ballots and booths, the rent of polling-places, and other similar expenditures incident to holding a primary are usually met from the public funds, although at the outset all such charges were covered by party assessments upon candidates. The government might also undertake to place in the hands of every voter in the given district a brief statement regarding the record and platform of each candidate. Such statements, prepared by the candidates' friends, or critics might be bound together and sent to every member of the

[1] See Message of President Roosevelt, December 3, 1907, on election expenses.

party in the constituency interested. The expense would not be great, while the educational value to the public would warrant an appropriation for the purpose. At any rate, the government might defray the cost of distributing such material.[1] It might also be possible to allow candidates the use of certain public buildings, such as schoolhouses, or perhaps to secure other meeting-places and permit their use by the several contestants. There is serious danger that under the present system the man without large means may find it almost impossible to enter the primary lists, or that he may incur obligations of a character that may interfere with his usefulness to the public. The candidate should not be subjected to the temptation of mortgaging his future political conduct for the sake of securing the necessary campaign fund.[2]

After all such remedies have been considered, it is clear that no readjustment of the political machinery can be relied upon to produce ideal political conditions. It is a common American fallacy to conclude that when a constitutional amendment, or a statute, or a charter, is secured the victory has been won and that the patriotic citizen may go back to the neglected plow. It is easier to secure ten men to fight desper-

[1] In Oregon arguments for and against referendum propositions are distributed by the secretary of state at public expense.

[2] The question of "corrupt practices" acts has an important bearing on this question, but is not discussed in this volume.

ately for good legislation than one who will fight steadily and consistently for efficient administration. Every student of politics knows, however, that there is no automatic device that will secure smoothly running self-government while the people sleep. Perpetual motion and automatic democracy are equally visionary and impossible. The governor gauges the pressure of public interest and regulates his conduct accordingly. The level of politics is in the long run the level of public interest in men and affairs political. Under any system the largest group of interested and active citizens will determine public policies, and will select the persons to formulate and administer them. The uninterested, or the spasmodically interested, the inactive and the irregularly active, will be the governed, not the governors.

Neither primary legislation nor any other type of legislation can change this situation. We may make it easier for the people to express their will; we may simplify the government and render it more clearly and directly responsible, but this alone will not insure the desired result. We may remove obstructions and hindrances and facilitate popular control, but we cannot do more.

The direct primary system is, therefore, to be regarded as an opportunity, not as a result. It signifies the opening of a broad avenue of approach to democracy in party affairs, but not the attainment of the goal.

APPENDICES

APPENDIX A

In this appendix the laws of New York, Illinois, Florida, Wyoming, and parts of the Iowa and Wisconsin laws are printed. The New York law is the best representative of the legally regulated convention system. The Illinois law is a fair type of the legally protected direct primary system. The Florida law typifies the southern acts, which generally rest largely in the discretion of the party managers. The Wyoming law shows the old type of a rudimentary and wholly incomplete regulation of the primary process. The extract from the Iowa law authorizing the commission system of government shows the sections essential to an explanation of the non-partisan primary. The chapter of the Wisconsin law, here reprinted, shows the combination of the system of nomination by petition only with the optional non-partisan primary.

[*The Illinois law, showing a state-wide, mandatory, direct primary measure.*]

§1. What candidates nominated; committeemen; exemptions; proviso.

§2. Political party defined.

§3. Party vote; how determined.

§4. Words and phrases; how construed.

§5. Polling places.

§6. Dates of primaries; hours.

§7. Voter's leave of absence.

§8. Committees; central or managing.

§9. Committees; composition; organization; powers, etc.
1. State central committee.
2. Precinct committee.
3. County central committee.
4. Senatorial committee.
5. Congressional committee.
6. City central committee.
7. Powers and duties of committees.
8. Existing party committees recognized.

§10. Convention dates; organization; delegates; call, etc.
a) County conventions.
b) Senatorial conventions.
c) Congressional conventions.
d) State conventions.
e) Functions of conventions.
f) Calls for convention; filing; form.

§11. Representatives in General Assembly; number; how voted for.

§12. Aldermen under minority representation.

§13. Notice of primary; duty of clerks.

§14. Judges of primary.
§15. Judges hold over.
§16. Judges absent, etc.; vacancies.
§17. Clerks of primary.
§18. Oath of judges and clerks; form; liability.
§19. Oath of judges and clerks; administration.
§20. Judges and clerks; powers and duties.
§21. Judges and clerks; pay.
§22. Challengers.
§23. Booths; electioneering prohibited.
§24. Ballot-boxes.
§25. Supplies.
§26. Expenses.
§27. Poll books; form; certificates.
§28. Tally sheets; form.
§29. U. S. senator; petition; advisory vote.
§30. Petition; foreign; number of signers.
§31. Petition; filing; withdrawal.
§32. Certificate to county clerk.
§33. Ballots; by whom printed.
§34. Ballots; names printed on.
§35. Ballots; color; size, etc.
§36. Ballots; form.
§37. Ballots; indorsement.
§38. Specimen ballots.
§39. Ballots; delivery to judges.
§40. Ballots; receipt for.
§41. Extra ballots.
§42. Polls; opening and closing.
§43. Ballot-box; care and custody.
§44. Qualifications of voters.
§45. Voter; party affiliation, etc.
§46. Challenged voter; affidavits.
§47. Ballot; how marked.
§48. Ballot; how voted.
§49. Assistance to voter.
§50. No adjournment or recess.
§51. Canvass at polling place.
§52. Ballots; "defective," etc.
§53. Canvass of ballots.
§54. Canvass of ballots; certificates.
§55. Ballots; strung, sealed and indorsed.
§56. Precinct returns; how made.
§57. Canvass of returns.
§58. Certificates of nomination and election.
§59. Plurality nominations; tie vote.
§60. Ballot for general election.
§61. Special elections; filling vacancies.
§62. Board of election commissioners; duties.
§63. Contests.
§64. Independent candidates.
§65. Liquor; penalty.
§66. False swearing deemed perjury.
§67. Illegal voting; bribery, etc.; penalty.
§68. Bribery defined; prosecution; penalty.
§69. Disorderly conduct; penalty.
§70. Wagers; penalty.
§71. Offenses of judges; penalty.
§72. Disclosing how elector voted; penalty.
§73. Offenses of clerk; penalty.
§74. Failure to deliver returns, etc.; penalty.
§75. Neglect or refusal of clerk; penalty.
§76. Offenses in canvassing returns; penalty.
§77. Stealing or defacing returns; penalty.
§78. False entries, etc.; penalty.
§79. Other violations; penalty.
§80. Repeal.
§81. Invalidity.

(SENATE BILL NO. 606. APPROVED FEBRUARY 21, 1908)

An Act to provide for the holding of primary elections by political parties.

SECTION 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly:* The nomination of all candidates for all elective state, congressional, senatorial, county, city and village (including officers of the municipal court of Chicago), town and judicial offices, members of the state board of equalization, clerks of the appellate courts, trustees of sanitary districts, and for the election of precinct, senatorial, and state central committeemen, by all political parties, as defined by section 2 of this Act, shall be made in the manner provided in this Act, and not otherwise: *Provided*, this Act shall not apply to the nomination of candidates for electors of President and Vice-President of the United States, and trustees of the University of Illinois: *And, provided, further*, that this Act shall not apply to township and school elections.

The name of no person, nominated by a party required hereunder to make nominations of candidates shall be placed upon the official ballot to be voted at the election to be held the first Tuesday after the first Monday in the month of November, A.D. 1908, as a candidate for any office, when provision is made herein for nominating candidates for such office, except President and Vice-President of the United States, unless such person shall have been nominated for such office under the provisions of this Act, and all nominations made prior to July 1, A.D. 1908, of candidates for any such office to be voted for at said election are hereby declared of no effect and no nomination for any such office made prior to July 1, A.D. 1908, shall entitle any person, so nominated, to have his name placed upon the official ballot to be voted at said election.

§2. A political party, which at the general election for state

and county officers then next preceding a primary, polled more than 2 per cent. of the entire vote cast in the state, is hereby declared to be a political party within the state, and shall nominate all candidates provided for in this Act under the provisions hereof.

A political party, which at the general election for state and county officers then next preceding a primary cast more than 2 per cent. of the entire vote cast within any congressional or senatorial district, is hereby declared to be a political party within the meaning of this Act, within such congressional or senatorial district and shall nominate its candidates for representative in Congress, for member of the state board of equalization and for senatorial offices within said district, under the provisions hereof.

A political party, which at the general election for state and county officers then next preceding a primary, cast more than 2 per cent. of the entire vote cast in any county, is hereby declared to be a political party within the meaning of this Act, within said county, and shall nominate all county officers in said county under the provisions hereof.

A political party, which at the general election for city and village officers then next preceding a primary, cast more than 2 per cent. of the entire vote cast in any city or village, is hereby declared to be a political party within the meaning of this Act, within said city or village, and shall nominate all city or village officers in said city or village under the provisions hereof.

A political party, which at the general election for town officers then next preceding a primary, cast more than 2 per cent. of the entire vote cast in said town, is hereby declared to be a political party within the meaning of this Act, within said town, and shall nominate all town officers in said town under the provisions hereof.

A political party, which at the general election in any other

municipality or political subdivision, except townships and school districts, for municipal or other offices therein, then next preceding a primary, cast more than 2 per cent. of the entire vote cast in such municipality or political subdivision, is hereby declared to be a political party within the meaning of this Act within said municipality or political subdivision, and shall nominate all municipal or other officers therein under the provisions hereof.

§3. In determining the total vote of a political party, whenever required by this Act, the test shall be the total vote cast by such political party for its candidate who received the greatest number of votes.

§4. The following words and phrases in this Act shall, unless the same be inconsistent with the context, be construed as follows:

1. The word "primary," the primary election provided for in this Act.

2. The word "election," a general election, as distinguished from a special election or a primary election.

3. The word "precinct," a voting district heretofore or hereafter established by law within which all qualified electors vote at one polling place.

4. The words "state offices" or "state officer," an office to be filled, or an officer voted for, by the qualified electors of the entire State.

5. The words "congressional office" or "congressional officer," representatives in Congress and members of the state board of equalization.

6. The words "senatorial office" or "senatorial officer," state senator and representative in the General Assembly.

7. The words "judicial office" or "judicial officer," judges of the supreme and circuit courts and judges of the superior court of Cook County.

8. The words "county office" or "county officer," an office to be filled, or an officer to be voted for, by the qualified electors of the entire county; members of the board of assessors and county commissioners of Cook County.

9. The words "city office" and "village office," or "city officer," and "village officer," an office to be filled or an officer to be voted for by the qualified electors of the entire city or village, as the case may be, including aldermen.

10. The words "town office" or "town officer," an office to be filled or an officer to be voted for, by the qualified electors of an entire town.

11. The word "town" as used in this Act shall be construed to mean an incorporated town.

§5. The primary herein provided for shall be held at the regular polling places, as now established, or which may here after be established, for the purpose of a general election.

§6. A primary shall be held on the second Tuesday in April in every year except the year A.D. 1908, in which year a primary shall be held on the 8th day of August, A.D. 1908, in which officers are to be voted for on the first Tuesday after the first Monday in November of such year, for the nomination of candidates for such offices as are to be voted for at such November election, and shall be known as the April primary: *Provided, however*, that wherever in this Act the term "April primary," or equivalent words shall appear, such term or such words shall be construed, as to the primary held in August, A.D. 1908, to refer to and govern such primary so held in August, A.D. 1908.

A primary shall be held on the second Tuesday in April in any year in which judges of the supreme court, judges of the circuit court and judges of the Superior Court of Cook County, or any of them, are to be elected at an election to be held on

the first Monday in June of each year for the nomination of candidates for such offices respectively.

A primary shall be held on the last Tuesday in February in each year for the nomination of such officers as are to be voted for on the first Tuesday in April of such year.

A primary shall be held on the second Tuesday in March in each year for the nomination of such officers as are to be voted for on the third Tuesday in April of such year.

A primary for the nomination for all other officers, nominations for which are required to be made under the provisions of this Act, shall be held three weeks preceding the date of the general election for such offices respectively.

The polls shall be open from six o'clock A. M. to five o'clock P. M.

§7. Any person entitled to vote at such primary shall, on the day of such primary, be entitled to absent himself from any service or employment in which he is then engaged or employed for a period of two hours between the time of opening and closing the polls, and such primary elector shall not, because of so absenting himself, be liable to any penalty nor shall any reduction be made on account of such absence, from his usual salary or wages *Provided, however*, that applications for such leave of absence shall be made prior to the day of primary. The employer may specify the hours during which said employee may absent himself.

§8. The following committees shall constitute the central or managing committees of each political party, viz.:

A state central committee; a congressional committee for each congressional district; a senatorial committee for each senatorial district; a county central committee for each county; a city central committee for each city or village; and a precinct committee for each precinct: *Provided, however*, that nothing herein contained shall prevent a political party

from electing or appointing in accordance with its practice other committees.

§9. (1) The state central committee shall be composed of one member from each congressional district in the state, and shall be elected as follows:

At the August primary held in the year A.D. 1908, and at the April primary held every two years thereafter, each primary elector may vote for one candidate of his party for member of the state central committee for the congressional district in which he resides. The state central committee of each political party shall be composed of members elected from the several congressional districts of the state as herein provided, and of no other person or persons whomsoever. The members of the state central committee shall, within thirty days after their election, meet in the city of Springfield, and organize by electing from among their number a chairman and may at such time elect such other officers from among their own number, or otherwise, as they may deem necessary or expedient. The outgoing chairman of the state central committee of the party shall, ten days before the meeting, notify each member of the state central committee elected at the primary of the time and place of such meeting.

2. At the August primary held in August, A.D. 1908, and at the April primary held every two years thereafter, each primary elector may write or attach in the space left on the primary ballot for that purpose the name of one qualified primary elector of his party in the precinct for member of his political party precinct committee. The one having the highest number of votes shall be such committeeman of such party for such precinct. In case of a tie the primary judges shall cast lots. The official returns of the primary judges shall show the name and address of the committeeman of each political party.

3. The county central committee of each political party shall consist of the members of the various precinct committees of such party in the county.

4. The senatorial committee of each political party shall be elected as follows:

a) In senatorial districts comprised of three or more counties, the senatorial committee shall be composed of one member elected from each county of such senatorial district.

At the August primary held in the year A.D. 1908, and at the April primary held every two years thereafter, each primary elector, may vote for one candidate of his party residing in his county for member of the senatorial committee of his party.

b) In senatorial districts comprised of two counties the senatorial committee shall be composed of three members, two of whom shall be elected from the county in which such political party, at the general election for state and county officers then next preceding a primary polled the larger number of votes in such senatorial district, and one of whom shall be elected from the other county of such senatorial district.

At the August primary held in the year A.D. 1908, and at the April primary held every two years thereafter, each primary elector, residing in a county in which such political party at the general election for state and county officers then next preceding a primary, polled the larger number of votes in such senatorial district, may vote for two candidates of his party, residing in his county, for members of the senatorial committee of his party (and at such primary in the other county of such senatorial district, each primary elector may vote for one candidate of his party) residing in his county for member of the senatorial committee of his party.

c) In senatorial districts composed of one county, and in senatorial districts wholly within the territorial limits of one county or partly within the territorial limits of one county

and partly within the territorial limits of another county, the senatorial committee shall be composed of three members elected from such senatorial district.

At the August primary held in the year A.D. 1908, and at the April primary held every two years thereafter, each primary elector may vote for three candidates of his party, residing in such senatorial district, for members of the senatorial committee of his party.

Within thirty days after its election, the senatorial committee shall meet and proceed to organize by electing from among its own number a chairman, and either from among its own number or otherwise, such other officers as said committee may deem necessary or expedient. The outgoing chairman of the senatorial committee of the party shall notify the members elected of the time and place (which shall be in the limits of such senatorial district) of such meeting.

5. The congressional committee of each political party shall be composed of the chairmen of the county central committees of the counties composing the congressional district, excepting that in congressional districts wholly within the territorial limits of one county, or partly within the territorial limits of one county and partly within the territorial limits of another county, then the members of the precinct committees of the party residing within the limits of the congressional district shall compose the congressional committee.

6. The city central committee of each political party shall be composed of the precinct committeemen of such party residing in such city.

7. Each committee and its officers shall have the powers usually exercised by such committees, and by the officers thereof, not inconsistent with the provisions of this Act. The several committees herein provided for shall not have power to delegate any of their powers or functions to any other per-

son, officer or committee, but this shall not be construed to prevent a committee from appointing from its own membership, proper and necessary subcommittees, and particularly defining, by resolution, the duties of such subcommittees.

8. The various political party committees now in existence are hereby recognized and continued, and shall exercise the powers and perform the duties herein prescribed until their successors are chosen, in accordance with the provisions of this Act.

§10. *a*) On the second Wednesday next succeeding the April primary, the county central committee of each political party shall meet at the county seat of the proper county, and proceed to organize by electing from among its own number a chairman, and either from among its own number or otherwise, such other officers as said committee may deem necessary or expedient. Such meeting of the county central committee shall be known as the county convention. The county convention of each political party shall choose delegates to the senatorial, congressional, and state convention of its party: *Provided*, only precinct committeemen residing within the limits of a senatorial or congressional district shall participate in the selection of delegates to senatorial and congressional conventions respectively: *And, provided, further*, that in the county convention that each delegate to the county convention shall have one vote and one additional vote for each fifty or major fraction thereof of his party as cast in his precinct at the last general election.

b) All senatorial conventions shall be held on the third Wednesday next succeeding the April primary.

c) All congressional conventions shall be held on the fourth Wednesday next succeeding the April primary. The congressional convention of each political party shall have power to choose and select delegates and alternate delegates to national

nominating conventions and to recommend to the state convention of its party the nomination of candidate or candidates from such congressional district for elector or electors of President and Vice-President of the United States.

d) All state conventions shall be held on the fifth Wednesday next succeeding the April primary. The state convention of each political party shall have power to make nominations of candidates for the electors of President and Vice-President of the United States, and for trustees of the University of Illinois, and to adopt any party platform and to choose and select in accordance with the rules and regulations of its party delegates and alternate delegates to national nominating conventions.

e) Each convention may perform all other functions inherent to such political organization and not inconsistent with this Act.

f) At least thirty-three (33) days before the April primary the state, congressional and senatorial committees, respectively, of each political party shall file in the office of the county clerk in each county of the state or in each county of the congressional or senatorial district, a call for the state, congressional and senatorial conventions. Said call shall state, among other things, the time and place (designating the building or hall) for holding the state, congressional and senatorial conventions, respectively, the total number of delegates which shall compose each of said conventions, and the call for state conventions shall state, among other things, the number of delegates to which each county is entitled in the state convention; and the call for the congressional and senatorial conventions shall state, among other things, the number of delegates to which each county or political subdivision of any county, as the case may be, is entitled to in the respective congressional and senatorial conventions. Such call shall be signed by the chairman and attested by the secretary of the respective committees.

§11. At least thirty-three (33) days prior to the date of the April primary the senatorial committee of each political party shall meet and, by resolution, fix and determine the number of candidates to be nominated by their party at the primary for representative in the General Assembly. A copy of said resolution, duly certified by the chairman and attested by the secretary of the committee, shall, within five day thereafter, to be filed in the office of the secretary of state, and in the office of the county clerk of each county in the senatorial district.

In all primaries for the nomination of candidates for representatives in the General Assembly, each qualified primary elector may cast one vote for each of as many candidates as are to be nominated by his party, as above provided. And the said candidates for nomination highest in votes shall be declared nominated.

§12. In cities which have adopted minority representation in the city council, the city central committee shall, at least thirty (30) days prior to the date of the primary, by resolution, fix and determine the number of candidates for alderman in each of the wards of their city to be nominated by their party at the primary for the nomination of candidates for city offices.

A copy of said resolution, duly certified by the chairman and attested by the secretary, shall, within two days thereafter, be filed in the office of the city clerk.

In all primaries for the nomination of candidates for alderman under minority representation, each qualified primary elector may cast as many votes for one candidate as there are candidates to be nominated, or may distribute the same, or equal parts thereof, among the candidates for nomination as he shall see fit, and the candidate for nomination highest in votes shall be declared nominated.

§13. At least twenty (20) days before each primary, the county clerk of each county, or the city, village or town or

other clerk, whose duty it is to give notice of general elections under the general election laws of this state, for the election of officers whose nomination is required to be made under the provisions of this Act, shall prepare in the manner provided in the general election laws of this state, a notice of such primary, which notice shall state the time and place of holding the primary, the hours during which the polls will be open, the offices for which candidates will be nominated at such primary and the political parties entitled to participate therein. Such notices shall be posted at least fifteen (15) days prior to the primary by the same authorities and in the same manner as notices of election under the general election laws are required to be posted.

§14. The judges of general elections for state and county officers, for city and village officers and for town and other municipal officers, are hereby constituted respectively, the judges of primary elections in their respective precincts, under the provisions of this Act.

§15. It is hereby made the duty of the respective judges of general elections to act as judges of primary elections in their respective precincts until their successors, as judges of general elections, are duly appointed and qualified.

§16. If at the time for opening of a primary one of the primary judges be absent, or refuse to act, the judges present shall appoint some qualified primary elector of the precinct to act in his place. If two of the primary judges be absent or refuse to act, the judge present shall fill the vacancies in the same manner as above provided. If all three of the primary judges be absent, or refuse to act, the primary electors present, who reside in the precinct, shall select three of their number to act as primary judges. The judges so selected and appointed shall take the same oath, have the same powers, and perform the same duties and be subject to the same penalties as regularly constituted election judges.

§17. The primary judges in each precinct, except in cities having a board of election commissioners, shall select three qualified primary electors of said precinct to act as primary clerks, who shall continue to serve during the pleasure of said primary judges; but no more than two persons of the same political party shall be chosen primary clerks in the same precinct.

In cities having a board of election commissioners, the regularly appointed clerks of election shall act as clerks of the primary in their respective precincts.

§18. Previous to any vote being taken, the primary judges and clerks shall severally subscribe and take an oath or affirmation, in the following form, to-wit:

I do solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States and the constitution of the State of Illinois, and will faithfully and honestly discharge the duties of primary judge (or clerk, as the case may be) according to the best of my ability, and that I have resided in this State for one year, in this county for ninety days, and in this precinct thirty days next preceding this primary, and am entitled to vote at this primary.

All persons subscribing the oath as aforesaid, and all persons actually serving as primary judges and clerks, whether sworn or not, shall be deemed to be and are hereby declared to be officers of the county court of their respective counties; and such persons shall be liable to punishment by such court in a proceeding for contempt for any misbehavior as such primary judges or clerks, to be tried in open court, on oral testimony, in a summary manner, without written pleadings, but such trial, or punishment for contempt of court, shall not be any bar to any criminal proceedings against such primary judges or clerks for any violation of this Act.

§19. In case there shall be no justice of the peace or notary public present at the opening of a primary, or in case such

justice of the peace or notary public shall be appointed one of the primary judges or clerks, it shall be lawful for the primary judges to administer the oath or affirmation to each other, and to the primary clerks.

§20. The primary judges and clerks, except as otherwise provided in this Act, shall perform the same duties, have the same powers, and be subject to the same penalties as judges and clerks of general elections, under the election laws of this state.

§21. Primary judges and clerks shall receive the same pay, and shall be paid by the same authorities and in the same manner as judges and clerks under the election laws of this state.

§22. The precinct committeeman of each party may appoint in writing over his signature two party agents or representatives, with an alternate for each, who shall act as challengers for their respective parties for said precinct. Such challengers shall be protected in the discharge of their duties by the primary judges and peace officers and shall be permitted to remain within the polling place in such position as will enable them to see each person as he offers his vote, and said challengers may remain within the polling place throughout the canvass of the vote and until the returns are signed. All challengers shall be qualified primary electors in their respective precincts and shall have the same powers as challengers at general elections: *Provided*, that until precinct committeemen are elected hereunder, the county central committee of each party in the respective counties shall designate said challengers.

§23. All officers upon whom is imposed by law the duty of designating and providing polling places for general elections, shall provide in each such polling place so designated and provided, a sufficient number of booths for such primary election, which booths shall be provided with shelves, such sup-

plies and pencils as will enable the voter to prepare his ballot for voting and in which voters may prepare their ballots screened from all observation as to the manner in which they do so; and the guard rail shall be so constructed and placed that only such persons as are inside said rail can approach within six feet of the ballot-box and of such voting booths. The arrangement shall be such that the voting booths can only be reached by passing within said rail. Such booths shall be within plain view of the election officers and both they and the ballot boxes shall be within plain view of those outside the guard rail. No person other than the election officers and the challengers allowed by law and those admitted for the purpose of voting, as hereinafter provided, shall be permitted within the guard rail, except by authority of the primary officers to keep order and enforce the law.

The number of such voting booths shall not be less than one to every seventy-five voters or fraction thereof, who voted at the last preceding election in the precinct or election district.

No person whatever shall do any electioneering or soliciting of votes on primary day within any polling place or within one hundred feet of any polling place.

§24. Primary ballot-boxes shall be furnished by the same authorities and in the same manner and shall be of the same style and description as ballot-boxes furnished for the purpose of general elections, under the general election laws of this state.

§25. All necessary primary poll books, tally sheets, return blanks, stationery and other necessary primary supplies shall be furnished by the same authorities upon whom is imposed by law the duty of furnishing such supplies at general elections.

§26. The expense of conducting such primary, including the per diem of judges and clerks furnishing, warming, lighting and maintaining the polling place, and all other expenses

necessarily incurred in the preparation for, or conducting such, primary shall be paid in the same manner, and by the same authorities or officers respectively as in the case of elections.

§27. The primary poll books shall be substantially in the following form.

PRIMARY POLL BOOKS

Of a primary held in the.....Precinct in the county of.....on the ..... day of....., A.D.....

	Name of Voter	Residence, Street, and Number	Party Affiliation				
			Republican	Democrat	Prohibitionist	Socialist	
1	John Jones.....	.....	X				
2	Richard Smith.....	.....	..	X			
3	John Doe.....	.....	..	..	X		
4	Richard Doe.....	.....	..	..	..	X	
5	Charles Lee.....	.....	..	..	..	..	X

This is to certify that the above and foregoing is a correct list of primary voters at a primary held on the.....day of..... A. D.....in the .....precinct, in ..... county and State of Illinois. That at said primary the undersigned judges and clerks served as required by law and are entitled to pay therefor.

Dated.....19....

....

....

....

Clerks of Primary. *Judges of Primary*

Said primary poll books shall otherwise be in form and shall contain the same certificates as nearly as may be as the poll

books used in the regular election and shall be signed and attested in the same manner, as nearly as may be, as the poll books used for the purposes of regular elections.

§28. The tally sheets for each political party participating in the primary election shall be substantially in the following form:

Tally sheets for.....(Name of political party) for the.....Precinct, in the county of..... for a primary held on the.....day of.....A.D...

The names of the candidates for nomination and for state central committeemen, senatorial committeemen and precinct committeemen, shall be placed on the tally sheets of each political party by the primary clerks in the order in which they appear on the primary ballot."

§29. Any candidate for United States senator may have his name printed upon the primary ballot of his political party by filing in the office of the secretary of state, not less than thirty (30) days prior to the date of the April primary, in any year, a petition signed by not less than three thousand (3,000) primary electors, nor more than five thousand (5,000) members of, and affiliated with, the party of which he is a candidate, and no candidate for United States Senator, who fails to comply with the provisions of this Act, shall have his name printed upon any primary ballot: *Provided*, that the vote upon candidates for United States Senator shall be had for the sole purpose of ascertaining the sentiment of the voters of the respective parties.

§30. The name of no candidate for nomination, or state central committeemen or senatorial committeemen, shall be printed upon the primary ballot unless a petition for nomination shall have been filed in his behalf, as provided in this Act in substantially the following form.

We, the undersigned, members of and affiliated with the..... party and qualified primary electors of said.....party, in the .....of.....in the county of.....and State of Illinois, do hereby petition that the following named person or persons shall be a candidate or candidates of the..... party for the nomination for the office or offices hereinafter specified to be voted for at the primary election held on the.....day of.....A.D.....

NAME	OFFICE	ADDRESS
John Jones	Governor	Belvidere, Illinois
Thomas Smith	Sheriff	Oakland, Illinois

Name..... Address.....

State of Illinois, } ss
.....County }

I,.....do hereby certify that I am upwards of the age of twenty-one years, that I reside at No..... street, in the .....of .....county of ....and State of Illinois, and that the signatures on this sheet were signed in my presence, and are genuine, and that to the best of my knowledge and belief the persons so signing were at the time of signing said petitions qualified voters and that their respective residences are correctly stated, as above set forth.

.....

Subscribed and sworn to before me this.....day of.....A.D.....

.....

.....

Such petitions shall consist of sheets of uniform size, and each sheet shall contain above the space for signatures an appropriate heading giving the information as to name of candidate or candidates, in whose behalf such petition is signed; the office, the political party represented, place of residence, and such other information or wording as required to make same valid; and the heading of each sheet shall be the same. Such petitions shall be signed by qualified primary electors

in their own proper persons only, and opposite the signature of each signer, his residence address shall be written (and if a resident of a city having a population of over 10,000 by the then last preceding federal census, the street number of such residence shall be given). No signature shall be valid or be counted in considering the validity or sufficiency of such petition, unless the requirements of this section are complied with, except as herein otherwise provided. At the bottom of each sheet of such petition shall be added a statement, signed by an adult resident of the political division for which the candidate is seeking a nomination, stating his residence address (and if a resident of a city having a population of over 10,000 by the then last preceding federal census, also stating the street and number of such residence) certifying that the signatures on that sheet of said petition were signed in his presence, and are genuine; and that to the best of his knowledge and belief the persons so signing were at the time of signing said petition qualified voters of the political party for which a nomination is sought. Such statement shall be sworn to before some officer of the county in which the person making such statement resides, authorized to administer the oaths therein. Such sheets before being filed, shall be neatly fastened together in book form, by placing the sheets in a pile and fastening them together at one edge in a secure and suitable manner, and the sheets shall then be numbered consecutively. The sheets shall not be fastened by pasting them together end to end, so as to form a continuous strip or roll. Said petition, when filed, shall not be withdrawn or added to, and no signatures shall be revoked except by revocation filed in writing with the clerk or other proper officer with whom the petition is required to be filed, and before the filing of such petition. Whoever, in making the sworn statement above prescribed, shall knowingly, wilfully and corruptly swear falsely, shall be deemed guilty

of perjury, and on conviction thereof, shall be punished accordingly. Whoever forges the name of a signer upon any petition required by this Act, shall be deemed guilty of a forgery, and on conviction thereof, shall be punished accordingly.

Petitions of candidates for nomination for offices herein specified, to be filed with the same officer, may contain the names of two or more candidates of the same political party for the same or different offices.

Such petitions for nomination shall be signed:

a) If for a state office, by not less than one thousand (1,000) nor more than two thousand (2,000) primary electors of his party;

b) If for a congressional or senatorial office, by at least one-half of 1 per cent. of the qualified primary electors of his party in his congressional or senatorial district, as the case may be;

c) If for a judicial office, by at least one-half of 1 per cent. of the qualified primary electors of his party in the district or division for which the nomination is made;

d) If for a county office, by at least one-half of 1 per cent. of the qualified primary electors of his party in his county: *Provided*, that if for the nomination for county commissioner of Cook County, then by at least one-half of 1 per cent. of the qualified primary electors of his party in his county in the district or division in which such person is a candidate for nomination.

e) If for a city or village office, to be filled by the electors of the entire city or village, by at least one-half of 1 per cent. of the qualified primary electors of his party in his city or village; if for alderman, by at least one-half of 1 per cent. of the voters of his party of his ward;

f) If for state central committeeman, by at least one hundred (100) of the primary electors of his party of his congressional district;

g) If for senatorial committeeman by at least ten (10) of the primary electors of his party of the county where the senatorial district is coextensive with one county or is composed of more than one county; but in case the senatorial district is wholly within the territorial limits of one county, or partly within the territorial limits of one county and partly within the territorial limits of another county, then such petition shall be signed by at least ten (10) of the primary electors of his party of his senatorial district.

h) If for a candidate for trustee of a sanitary district, by at least one-half of 1 per cent. of the primary electors of his party from such sanitary district;

i) If for a candidate for clerk of the appellate court, by at least one-half of 1 per cent. of the primary electors of his party of the district;

j) If for any other office, by at least ten (10) primary electors of his party of the district or division for which nomination is made.

§31. All petitions for nomination shall be filed as follows:

1. Where the nomination is to be made for an office to be filled by the electors of the entire state, or any division or district greater than a county, including congressional, senatorial and judicial offices, then such petition for nomination shall be filed in the office of the secretary of state not more than sixty (60) nor less than thirty (30) days prior to the date of the primary;

2. Where the nomination is to be made for an office to be filled by the electors of an entire county, and for county commissioners of Cook County, except senatorial offices, the petitions for nomination shall be filed in the office of the county clerk not more than sixty (60) nor less than thirty (30) days prior to the date of the primary;

3. Where the nomination is to be made for an office to be

filled by the electors of an entire city or village, including aldermen, such petitions for nomination shall be filed in the office of the city or village clerk not more than thirty (30) nor less than fifteen (15) days prior to the date of the primary;

4. Where the nomination is to be made for an office to be filled by the electors of a town, then such petition for nomination shall be filed in the office of the town clerk not more than thirty (30) and not less than fifteen (15) days prior to the date of the primary;

5. The petitions of candidates and for state central committeemen shall be filed in the office of the secretary of state not more than sixty (60) and not less than (30) days prior to the primary;

6. The petitions of candidates for senatorial committmen shall be filed in the office of the county clerk not more than (60) and not less than thirty (30) days prior to the primary;

7. The secretary of state and the various clerks with whom such petitions for nominations are filed shall indorse thereon the day and hour on which each petition was filed;

8. Any person for whom a petition for nomination or for committeeman has been filed may cause his name to be withdrawn by his request in writing, signed by him and duly acknowledged before an officer qualified to take acknowledgments of deeds and filed in the office of the secretary of state not less than twenty-five (25) or with the proper clerk not less than twelve (12) days prior to the date of the primary, and no name so withdrawn shall be certified by the secretary of state to the county clerk, or printed on the primary ballot.

§32. Not less than twenty (20) days prior to the date of the primary, the secretary of state shall certify to the county clerk of each county the names of all candidates for United States Senator, and of all candidates for members of the state central committee, and of all candidates for the nomination for all

offices, as specified in the petitions for nominations on file in his office, which are to be voted for in such county, stating in such certificates the political affiliation of each candidate for nomination, or committeeman, as specified in said petition. The secretary of state shall, in his certificate to the county clerk, certify to said county clerk the names of the offices and the names of the candidates in the order in which said offices and said names shall appear upon the primary ballot, said names to appear in the order in which petitions shall have been filed in his office.

§33. The county clerk of each county and in cities, villages and towns, the clerk thereof, as the case may be, shall prepare and cause to be printed the primary ballot of each political party for each precinct in his respective county, city, village, or town.

§34. It is hereby made the duty of the county clerk of each county to cause to be printed upon the primary ballot of each party for each precinct in his county the name of each candidate whose petition for nomination has been filed in the office of the county clerk as herein provided; and also the name of each candidate whose name has been certified to his office by the secretary of state, and in the order so certified.

It shall be the duty of the city or village or town clerk, as the case may be, to cause to be printed upon the primary ballot of each political party for each precinct in his city, village or town, as the case may be, the name of each candidate whose petition for nomination has been filed in his office, as herein provided, and which is to be voted for in such precinct.

§35. The primary ballot of each political party shall be separately printed upon paper of uniform quality, texture and size, but the primary ballot of no two political parties shall be of the same color or tint.

The clerk, whose duty it shall be to cause to be printed the

primary ballot, shall, at least fifteen (15) days prior to the date of the primary, post in a conspicuous place in his office an announcement of the color of the primary ballots of the respective parties, and, in the case of the county clerk, shall also publish such announcement for at least one (1) week in at least three (3) newspapers of general circulation in the county. In the case of the city clerk, such publication shall be made at least one (1) week in three (3) newspapers printed and published in the city, if there be three newspapers printed and published in said city.

§36. The primary ballot of each political party for each precinct shall be arranged and printed substantially in the manner following:

1. At the top of the ballot shall be printed in large capital letters, words designating the ballot—if a Republican ballot, the designating words shall be: "REPUBLICAN PRIMARY BALLOT;" if a Democratic ballot, the designating words shall be: "DEMOCRATIC PRIMARY BALLOT," and in like manner for each political party.

2. Beginning not less than one inch below the designating words, the name of each office to be filled shall be printed in capital letters and in the following order, to-wit; Under States Senator, state offices, congressional offices, senatorial offices, judicial offices, clerks of the appellate courts, members of the state central committee, members of the senatorial committee, trustees of sanitary districts, county offices, city and village offices, town offices, or of such of said offices as candidates are to be nominated for at such primary, and precinct committeeman.

Below the name of each office shall be printed in small letters the directions to the voters: "Vote for one;" "Vote for two;" "Vote for three;" or a spelled number designating how many persons under that head are to be voted for.

Below the name of each office shall be printed in capital letters the names of all candidates (arranged in the order in which their petitions for nomination were filed) for the nomination for said office which are entitled to be placed upon the respective party primary ballot. The names of all candidates upon the primary ballot shall be printed in type of uniform size and the names shall be printed in a column. Immediately opposite and in front of the name of each candidate shall be printed a square and all squares upon the primary ballot shall be of uniform size. Spaces between the names of candidates under each office shall be uniform, and sufficient spaces shall separate the names of candidates for one office from the names of candidates for another office, to avoid confusion.

3. At the bottom of the primary ballot and under the heading "for precinct committeeman," a space sufficiently large shall be left in which the primary elector may write or attach the name of one primary elector of his party in the precinct as his choice for precinct committeeman. No square need be placed in front of the name of the person voted for precinct committeeman.

§37. On the back or outside of the primary ballot of each precinct, so as to appear when folded, shall be printed the words, "Primary Ballot," followed by the designation of said precinct, the date of the primary and a *facsimile* of the signature of the clerk who furnished the ballots.

§38. The officer whose duty it shall be to cause the printing of the primary ballots shall, not less than five (5) days prior to the primary, transmit or cause to be delivered to the primary judges, specimen ballots of each political party, substantially in the form of the official primary ballots, to be used at the primary, which specimen ballot shall be printed upon paper of a different texture and color from the official primary ballot, and it shall be the duty of the primary judges to post not less

than five (5) of each such specimen ballots in the precinct, one of each such specimen ballots to be posted at the polling place.

§39. The officer so charged with the printing of primary ballots shall cause to be delivered to the primary judges of each precinct not less than twelve (12) hours before the time fixed for the opening of the polls, the official primary ballot of each political party, and the number thereof for each political party in each precinct shall be one hundred (100) for each fifty (50) votes cast in said precinct by said political party at the last preceding election.

§40. The official primary ballots shall be put in separate sealed packages with marks on the outside thereof clearly designating the precinct for which they are intended, and the number of ballots inclosed for each political party and a receipt therefor shall be given by the primary judge to whom such ballots are delivered, which receipt shall be filed by the proper clerk in his office.

§41. The officer so charged with the printing of primary ballots shall provide and retain in his office until after the primary, an ample supply of extra primary ballots for each political party in each precinct and if at any time before or during the primary, ballots of any precinct shall be lost, destroyed or exhausted, on written application signed by the primary judges of said precinct, or any of them, he shall immediately cause to be delivered to said primary judges such supply of extra ballots as may be required to comply with the provisions of this Act.

§42. Upon the opening of the polls one of the primary judges shall make proclamation of the same. And at least thirty (30) minutes before the closing of the polls proclamation shall be made in like manner that the polls will be closed in half an hour.

§43. Before voting begins, the ballot-box shall be emptied

and it shall be opened and shown to those present to be empty, after which it shall be locked and the key delivered to one of the primary judges and such ballot-box shall not be removed from public view from the time it is shown to be empty until after the close of the polls.

§44. No person shall vote at a primary unless he shall be a legally qualified voter, under the general election laws of this state, and unless he declares his party affiliation, as required by this Act, and in all cases where registration is required as a condition precedent to voting at regular elections only registered voters shall be entitled to vote at such primary: *Provided, however*, that at such primary, any legal voter of a precinct, who has not registered, shall be entitled to vote in case he shall file with the primary judges an affidavit stating the time when he removed into such precinct, and the length of his legal residence in such precinct, county and state, and that he has removed into that precinct since the last registration of electors at the last election and that he is a legal voter of such precinct, supported by an affidavit of a registered voter and householder of such precinct, that he knows such voter and that his statements as to the time of his residence, as aforesaid are correct, and that such person is a legal voter in such precinct.

And no person shall be allowed to vote at a primary who shall have signed the petition for nomination of a candidate of any party that he does not affiliate with, when such candidate is to be voted for at the primary.

And no person shall be allowed to vote who shall have signed the nominating papers of an independent candidate for any office for which office candidates are to be voted for at said primary, or if he shall have voted at a primary of another political party within a period of two years next preceding such primary: *Provided*, participation by a primary elector in a

primary of a political party which, under the provisions of sec. 2 of this Act, is a political party within a city, village or town only, and entitled hereunder to make nominations of candidates for city, village or town offices only, and for no other office or offices, shall not disqualify such primary elector from participating in other primaries of his party when, at such city, village or town primary, no candidate or candidates of the political party with which the primary elector declares himself affiliated had their name or names printed on the primary ballot of their party.

§45. Any person desiring to vote at a primary shall state his name, residence and party affiliation to the primary judges, one of whom shall thereupon announce the same in a distinct tone of voice sufficiently loud to be heard by all persons in the polling place. If the person desiring to vote is not challenged, one of the primary judges shall give to him one, and only one, primary ballot of the political party with which he declares himself affiliated, on the back of which such primary judge shall indorse his initials in such manner that they may be seen when the primary ballot is properly folded. If the person desiring to vote is challenged he shall not receive a primary ballot from the primary judges until he shall have established his right to vote as hereinafter provided. No person who refuses to state his party affiliation shall be allowed to vote at a primary.

§46. Whenever a person offering to vote at a primary is challenged, the person so challenged shall make and subscribe an affidavit in the following form, which shall be presented to and retained by the primary judges and clerks, and returned by them with the primary poll books:

State of Illinois, }
County of ..... } *ss.*

I,....., do solemnly swear (or affirm) that

I am a citizen of the United States, of the age of twenty-one years or over, and am qualified to vote under and by virtue of the constitution and laws of the State of Illinois, and am a legally qualified voter of this precinct; that I now reside at.....(insert street and number, if any) in this precinct, and am a member of and affiliated with the.....party; that I have not voted at a primary of another political party within a period of two years prior to this date; and that I voted at the.....city, village or town primary, with the.....political party at the.....election held in .....A.D....., which said.....political party was entitled at said primary to make nominations of candidates for city, village or town offices only, and for no other offices, and that the name or names of no candidate or candidates of the.....political party (the political party with which the primary elector declares himself affiliated) were, at such city, village or town primary, printed on the primary ballot; that I have not signed the petition for nomination of a candidate of a political party with which I am not affiliated, and that I have not signed the nominating papers of an independent candidate for any office for which office candidates for nomination are voted for at this primary.

Subscribed and sworn to before me this.....day of .....A.D. 190....

.....
Judge of Primary

In addition to such affidavit the person so challenged shall produce the affidavit of one householder of the precinct who shall be a qualified voter at such primary, and who shall be personally known or proved to the judges to be a householder in the precinct, which affidavit shall be in the following form:

State of Illinois, } *ss.*
County of..... }

I, ..., do solemnly swear (or affirm) that I am a householder of this precinct and entitled to vote at this primary; that I am acquainted with.....(name of the party challenged),

whose right to vote at this primary has been challenged; that I know him to be an actual *bona fide* resident of this precinct, and that he has resided herein thirty days, and I verily believe he has resided in this county ninety days; and in this state one year next preceding this primary; that I verily believe he is a member of and affiliated with the.....party.

Subscribed and sworn to before me this.....day of .....A.D. 190....

.....

Judge of Primary

§47. On receiving from the primary judges a primary ballot of his party the primary elector shall forthwith and without leaving the polling place, retire alone to one of the voting booths and prepare such primary ballot by marking a cross (X) in the square in front of and opposite the name of each candidate of his choice for each office to be filled. At the primary at which a precinct committeeman is to be elected the primary elector may write or attach at the bottom of his primary ballot, in the space provided for that purpose, the name of one primary elector of his precinct, member of and affiliated with his political party, for precinct committeeman. No other mark or designation shall be necessary to indicate the primary elector's choice for precinct committeeman.

Any primary elector may, instead of voting for any candidate for nomination or for committeeman whose name is printed on the primary ballot, write in the name of any other person affiliated with such party as a candidate for the nomination for any office, or for committeeman, and indicate his choice of such candidate or committeeman by placing to the left of and opposite the name thus written a square and by placing in the square a cross (X). And at the primary at which precinct committeemen are to be elected he shall write at the bottom of his primary ballot, in the space provided for that purpose, the name of one primary elector of his precinct,

member of and affiliated with his political party, for precinct committeeman. No squares need be placed in front of the names of the persons so voted for for precinct committeemen.

§48. Before leaving the booth, the primary elector shall fold his primary ballot in such manner as to conceal the marks thereon. Such voter shall then vote forthwith by handing the primary judge the primary ballot received by such voter. Thereupon the primary judge shall deposit such primary ballot in the ballot-box. The primary clerk shall thereupon enter in the primary poll book the name of the primary elector, his residence and his party affiliation.

§49. Any primary elector who may declare upon oath that he cannot read the English language, or that by reason of any physical disability he is unable to mark his ballot shall, upon request, be assisted in marking his primary ballot in the same manner as provided by the general election laws of this State.

§50. After the opening of the polls at a primary no adjournment shall be had, nor recess taken until the canvass of all the votes is completed and the returns carefully enveloped and sealed.

§51. The votes shall be canvassed in the room or place where the primary is held and the primary judges shall not allow the ballot-box or any of the ballots, or the primary poll book, or any of the tally sheets to be removed or carried away from such room or polling place until the canvass of the votes is completed and the returns carefully enveloped and sealed.

§52. If the primary elector marks more names upon the primary ballot than there are persons to be nominated as candidates for an office, or for state central committeeman or senatorial committeeman, or precinct committeeman, or if for any reason it is impossible to determine the primary elector's choice of a candidate for the nomination for an office, or committeeman, his primary ballot shall not be counted for the

nomination for such office or for the election of delegate, alternate or committeeman.

No primary ballot, without the indorsement of the judges' initials thereon, shall be counted. Any judge wilfully omitting to indorse his initials on a primary ballot, as required by this Act, shall be guilty of a misdemeanor and punishable by a fine not exceeding one hundred dollars for each offense.

Primary ballots not counted shall be marked "defective" on the back thereof; and primary ballots to which objections have been made by either of the primary judges or challengers shall be marked "objected to" on the back thereof; and a memorandum signed by the primary judges stating how it was counted shall be written on the back of each primary ballot so marked, and all primary ballots marked "defective" or "objected to" shall be inclosed in an envelope and securely sealed, and so marked and indorsed as to clearly disclose its contents.

All primary ballots not voted, and all that have been spoiled by voters while attempting to vote, shall be returned to the proper clerk, by the primary judges, and a receipt taken therefor, and shall be preserved three months. Such official shall keep a record of the number of primary ballots delivered for each polling place, and he or they shall also enter upon such record the mumber and character of primary ballots returned, with the time when and the persons by whom they are returned.

§53. Immediately upon closing the polls, the primary judges shall proceed to canvass the votes in the manner following:

1. They shall separate and count the ballots of each political party;

2. They shall then proceed to ascertain the number of names entered on the primary poll books under each party affiliation;

3. If the primary ballots of any political party exceed in

number the names of voters of such political party entered on the primary poll books, the primary ballots of such political party shall be folded and replaced in the ballot-box, the box closed, well shaken and again opened and one of the primary judges, who shall be blindfolded, shall draw out and destroy so many of the primary ballots of such political party as shall be equal to such excess;

4. The primary judges shall then proceed to count the primary ballots of each political party separately; and as the primary judge shall open and read the primary ballots, each primary clerk shall carefully and correctly mark upon the tally sheets the votes which each candidate of the party whose name is written or printed on the primary ballot has received, in a separate column for that purpose, with the name of such candidate, the name of his political party and the name of the office for which he is a candidate for nomination at the head of such column.

§54. As soon as the ballots of a political party shall have been read and the votes of said political party counted, as provided in the last above section, the primary clerks shall foot up the tally sheets so as to show the total number of votes cast for each candidate of said political party and for each candidate for State central committeeman, senatorial committeeman and precinct committeeman, and certify the same to be correct. Thereupon, the primary judges shall set down in the primary poll books, under the name of said political party, the name of each candidate voted for upon the primary ballot, written at full length, the name of the office for which he is a candidate for nomination or for committeeman, the total number of votes which said candidate received, and the primary judges shall certify the same to be true and correct; said entry in the primary poll books to be made substantially in the following form:

.....PARTY.

At the primary election held in this precinct on the..... day of.....A.D., 19...., the respective candidates whose names were written or printed on the primary ballot of said .....party, received respectively the following votes:

Name of Candidate	Title of Office	No. of Votes
John Jones	Governor	100
Sam Smith	Governor	70
Frank Martin	Attorney General	150
William Preston	Representative in Congress	206
Tom Johnson	State Senator	74
Frederick John	County Judge	59

And so on for each candidate.

We hereby certify the above and foregoing to be true and correct. Dated this.....day of.....A. D., 19....

.....

.....

Judges of Primary

§55. After the votes of a political party have been counted and set down and the tally sheets footed and the entry made in the primary poll books, as above provided, all the primary ballots of said political party, except those marked "defective" or "objected to" shall be strung upon a strong thread of twine separately for each political party in the order in which said primary ballots have been read, and shall thereupon be carefully sealed in an envelope, which envelope shall be indorsed as follows:

Primary ballots of the.....party of the.....precinct of the county of..... and State of Illinois.

Below each indorsement, each primary judge shall write his name.

§56. The primary poll books, with the certificates of the primary judges written thereon, and the tally sheets, together

with the envelopes containing the ballots, shall be carefully enveloped and sealed up together, properly indorsed and put into the hands of the primary judges, who shall, within forty-eight (48) hours thereafter, deliver the same to the clerk from whom the primary ballots were obtained, which clerk shall safely keep the same for three (3) months.

§57. As soon as complete returns are delivered to the proper clerk, the returns shall be canvassed as follows:

1. In the case of the nomination of candidates for city offices, by the mayor, the city attorney and the city clerk;

2. In the case of the nomination of candidates for village offices, by the president of the board of trustees, one member of the board of trustees and the village clerk;

3. The officers who are charged by law with the duty of canvassing returns of general elections made to the county clerk, shall also open and canvass the returns of a primary made to such county clerk. Upon the completion of the canvass of the returns by the county canvassing board, said canvassing board shall make a tabulated statement of the returns for each political party separately, stating in appropriate columns and under proper headings, the total number of votes cast in said county for each candidate for nomination by said party, including candidates for United States Senator, and state central committeemen. Within two (2) days after the completion of said canvass by said county canvassing board, the county clerk shall mail to the secretary of state a certified copy of such tabulated statement of returns: *Provided, however*, that the number of votes cast for the nomination for offices, the certificate of election for which offices, under the general election laws, are issued by the county clerk, shall not be included in such certified copy of said tabulated statement of returns;

4. In the case of the nomination of candidates for offices,

including United States Senator and state central committeemen, certified tabulated statements of returns for which are filed with the secretary of state, such returns shall be canvassed by the governor, secretary of state and state treasurer;

5. Where, in cities or villages which have a board of election commissioners, the returns of a primary are made to such board of election commissioners, said returns shall be canvassed by such board, and, excepting in the case of the nomination of candidates for any city or town office in such city, tabulated statements of the returns of such primary shall be made to the county clerk.

§58. Each of said canvassing boards, respectively, shall, upon completion of the canvassing of the returns, make proclamation of the result of said primary for each political party, and shall make and execute a certificate, and, unless a notice of contest shall have been filed with said canvassing board ten (10) days after the completion of the canvass, shall file such certificates in the office of the secretary of state, or in the office of the clerk whose duty it is to print the official ballot for the election for which the nomination is made, as the case may be, stating therein the name of each candidate of each political party so nominated, as shown by the returns, together with the name of the office for which he was nominated, including in the case of the state primary canvassing board, candidates for state central committeemen. In case a notice of contest shall be filed with any canvassing board, such canvassing board shall withhold its certificate until a certified copy of the decree or order of the court hearing such contest shall have been filed with such canvassing board. The said canvassing board shall, within one (1) day after receiving a certified copy of said decree or order, proceed to finish the canvass of the returns as corrected by such decree, and make proclamation accordingly.[1]

Upon the filing of said certificate in the office of the secretary of state, or in the office of the proper clerk, as the case may be, the secretary of state, or proper clerk, as the case may be, shall, within one (1) day thereafter, issue a certificate of nomination to each of the candidates so proclaimed nominated, except United States Senator.

The secretary of state shall also issue a certificate of election to each of the persons shown by the returns and the proclamation thereof to be elected state central committeeman.

The county canvassing board, or the board of election commissioners, as the case may be, shall issue a certificate of election to the requisite number of persons of each political party shown by the returns to be elected members of the senatorial committee.

§59. The person receiving the highest number of votes at a primary as a candidate of a party for the nomination for an office shall be the candidate of that party for such office and his name as such candidate shall be placed on the official ballot at the election then next ensuing; *Provided*, that where there are two or more persons to be nominated for the same office or board, the requisite number of persons receiving the highest number of votes shall be nominated and their names shall be placed on the official ballot at the following election.

In the case of candidates for nomination for members of the board of assessors, where five are to be elected, four of whom are to be elected from any one city and the city has the requisite number, then the candidate for nomination living outside of such city having the highest number of votes of his party shall be nominated, and his name shall be placed on the official ballot at the following election.

The person receiving the highest number of votes of his party for state central committeeman of his congressional

district shall be declared elected state central committeeman from said congressional district.

The requisite number of persons receiving the highest number of votes as candidates of their party in any county, or senatorial district, as the case may be, for senatorial committeemen shall be declared elected senatorial committeemen from such county or senatorial district.

When two or more persons receive an equal and the highest number of votes for the nomination for the same office or for committeeman of the same political party or where more than one person of the same political party is to be nominated as a candidate for office or committeeman, if it appears that more than the number of persons to be nominated for an office or elected committeemen, have the highest and an equal number of votes for the nomination for the same office or for election as committeemen, the board by which the returns of the primary are canvassed shall decide by lot which of such persons shall be nominated or elected, as the case may be. In such case such canvassing board shall issue notice in writing to such persons of such tie vote, stating therein the place, the day (which shall not be more than five (5) days thereafter) and the hour when such nomination or election shall be so determined.

§60. When the nomination is made for an office to be filled by the electors of an entire county, and where it is the duty of the county clerk to prepare the official ballot for the election, it shall be the duty of the county clerk, under this Act, to place upon the official ballot to be voted at the election the names of all candidates nominated for office, as herein provided, as shown by the certificate of the canvassing board on file in his office.

When the nomination is made for an office to be filled by the electors of an entire city or village, including alderman, and where it is the duty of the city or village clerk to prepare the

official ballot for the election, it shall be the duty of the city or village clerk, under this Act, to place upon the official ballot to be voted at the election the names of all candidates nominated for office, as herein provided, as shown by the certificate of the canvassing board on file in his office.

When the nomination is made for an office to be filled by the electors of an entire town, and where it is the duty of the town clerk to prepare the official ballot for the election, it shall be the duty of the town clerk, under this Act, to place upon the official ballot to be voted at the election, the names of all candidates nominated for office, as herein provided, as shown by the certificate of the canvassing board on file in his office.

Not less than fifteen (15) days before an election to fill any office, the secretary of state shall certify to the county clerk of each county within which any of the electors may, by law, vote for such candidates for such offices, the name and description of each person nominated for such office, as shown by the certificate of the canvassing board on file in his office.

§61. Whenever a special election shall be necessary, the provisions of this Act shall be applicable to the nomination of candidates to be voted for at such special election. The officer or board or commission whose duty it is, under the general election laws of this state, to call an election shall fix a date for the primary for the nomination of candidates to be voted for at such special election. At least fifteen (15) days' notice shall be given of such primary.

In case a candidate who has been nominated under the provisions of this Act shall die before election or decline the nomination, or should the nomination for any other reason become vacant, the managing committee of the respective political parties for the territorial area in which such vacancy occurs, shall nominate a candidate or candidates of the respective parties to fill such vacancies on the ticket.

§62. In cities, having a board of election commissioners, the duties herein imposed upon the county, city or village clerk, as the case may be, shall be discharged by the board of election commissioners, in the same manner, as near as may be, and to the same extent and with like effect that the similar duties imposed by this Act are discharged by the county, city or village clerk, as the case may be; and, the ballots for the nomination of all candidates to be voted for in such city, shall be printed by the board of election commissioners and the returns of the primary held in such city shall be made to such board of election commissioners.

§63. Any candidate whose name appears upon the primary ballot of any political party in any precinct may contest the election of the candidates nominated by his political party, upon the face of the returns, if he so desires, and may, in said county or any of the precincts thereof as to the office for which he was a candidate, contest the election in such county or precinct by filing with the clerk of the county court, except in the case of candidates for the nominations for state, congressional and senatorial offices and for the office of county judge, a petition in writing setting forth the grounds of contest, which petition shall be verified by the affidavit of the petitioner or other person, and which petition shall be filed within five (5) days after the completion of the canvas of the returns. The contestant shall also file with the canvassing board, which canvasses the returns for such nomination (and if for the nomination for an office, certified tabulated statements of the returns of which are to be filed with the secretary of state) also with the county canvassing board, a notice of the pendency of the contest. In the case of a contest for the nomination for state, congressional and senatorial offices and for the office of county judge, said petition shall be filed in the office of the clerk of the circuit court.

Authority and jurisdiction are hereby vested in the county court or in the judge thereof in vacation, or in the circuit court or in the judges thereof in vacation, as the case may be, to hear and determine primary contests. When a petition to contest, a primary shall be filed in the office of the clerk of the court, said petition shall forthwith be presented to the judge thereof, who shall note thereon the day of presentation, and shall also note thereon the day when he will hear the same, which shall not be more than five (5) days thereafter and shall order issuance of summons to each defendant named in the petition.

Summons shall forthwith issue to each defendant named in the petition and shall be served in the same manner as is provided in cases in chancery. Summons may be issued and served in any county in the state. The case may be heard and determined by the county or circuit court in term time, or by the judges thereof in vacation, at any time not less than three (3) days after service of process and shall have preference in the order of hearing to all other cases. The petitioner shall give security for all costs.

If, in the opinion of the court, in which the petition is filed, the grounds for contest alleged are insufficient in law, the petition shall be dismissed. If the grounds alleged are sufficient in law, the court shall proceed in a summary manner and may hear evidence, examine the returns, re-count the ballots and make such orders and enter such judgment as justice may require. The court shall ascertain and declare by a decree, as in chancery, to be entered of record in the proper court, the result of such election in the territorial area for which the contest is made. The judgment of the court shall be final. A certified copy of said decree shall forthwith be made by the clerk of the court and transmitted to the board canvassing the returns for such office and in case of contest, if for nomination for an office, tabulated statements of returns for which are

filed with the secretary of state, also in the office of the county clerk of the proper county. The proper canvassing board, or boards, as the case may be, shall correct the returns or the tabulated statement of returns in accordance with said decree.

§64. Nothing in this Act contained shall be construed to prevent the nomination of independent candidates by petition as is now or may hereafter be provided by law.

§65. No spiritous, malt, vinous, or intoxicating liquor shall be sold or given away, nor shall any saloon, bar room or place where such liquor is sold or given away, be open during the holding of any primary. Whoever violates the provisions of this section shall be fined in a sum not less than twenty-five (25) nor more than one hundred (100) dollars. It shall be the duty of the sheriff, constable, coroner and other officers of the county, the magistrates and mayors of cities to see that the provisions of this section are enforced.

§66. If any person whose vote is challenged, or any witness sworn under the provisions of this Act, shall knowingly, wilfully and corruptly swear falsely, he shall be deemed guilty of perjury and on conviction thereof, shall be punished accordingly.

§67. (1) Whoever unlawfully votes more than once at any primary or offers to vote after having once voted at such primary, or knowing that he is not a qualified elector at a primary, wilfully votes at such primary, shall on conviction thereof be fined in a sum not exceeding one thousand (1,000) dollars, or imprisoned in the county jail not exceeding one (1) year, or both in the discretion of the court;

2. Whoever wilfully aids or abets any one not legally qualified to vote at a primary in voting or attempting to vote at such primary; or

3. By unlawful means prevents or attempts to prevent any primary elector from attending or voting at a primary; or

4. Gives or offers to give any valuable thing or bribe to any judge or clerk of a primary, as a consideration of some act to be done or omitted to be done contrary to his official duty in relation to such primary shall, on conviction thereof, be fined in a sum not exceeding one thousand (1,000) dollars or imprisoned in the county jail not exceeding one (1) year, or both, in the discretion of the court; any judge or clerk who shall receive, request or demand any bribe or reward forbidden by this Act shall, on conviction, be liable to the same penalties as prescribed in this Act for giving or offering to give such bribe or reward.

§68. (1) Any person who shall solicit, request, demand or receive, directly or indirectly, any money, intoxicating liquor or other thing of value, or the promise thereof, either to influence his vote, or to be used, or under the pretense of being used to procure the vote of any other person or persons or to be used at any poll or other place prior to or on the day of a primary for or against any candidate for office, or for or against any measure or question to be voted upon at such primary, shall be deemed guilty of the infamous crime of bribery in primaries and upon conviction thereof in any court of record, shall be sentenced to disfranchisement by the judge of such court for a term of not less than five and not more than fifteen years, and to the county jail not less than three months nor more than one year, and to pay the cost of prosecution and stand committed to the county jail until such costs are fully paid. That for a conviction of a second offense under this section, the first being alleged and proven, such offender shall be by sentence of the court forever thereafter disfranchised and deprived of the right to vote at a primary in this state, and be imprisoned in the county jail not less than one year, and be committed to jail in default of the payment of costs of prosecution until such costs are fully paid. Prosecutions may be had

under this section by indictment in the circuit court, or by information in the county courts, and the effect of a sentence of disfranchisement in either of said courts both having jurisdiction of offenses hereunder, shall be to deprive such persons sentenced of the right to vote at any primary within this state for the period of time fixed by the court where such person shall be convicted under this section. Any candidate, or other person paying, furnishing or promising to pay or furnish or bribing such person, with money, intoxicating liquor, or any other thing of value, or the promise thereof, shall not be liable to punishment therefor, but shall be a competent witness and compelled to testify in prosecutions under this section. Solicitations of any person or a loan of money, or the purchase of anything of value, or any other subterfuge, shall be deemed a violation thereof.

2. Any person who shall have been legally convicted and disfranchised by a court of competent jurisdiction, who shall before the expiration of his term of disfranchisement, vote or offer to vote at any primary within this state shall, upon indictment and conviction thereof in a court of competent jurisdiction, be confined in the penitentiary for a term of years not less than one nor more than ten years.

§69. Whoever is disorderly at a primary shall forfeit a sum not exceeding twenty-five (25) dollars.

§70. Whoever bets or wagers any money, property or other valuable thing upon the result of the primary or bets or wagers money, property or other valuable thing upon the number of votes which may be given to any person at a primary, or who shall receive the greatest number of votes at a primary; or agrees to pay any other person any money, property or other valuable thing in the event that a primary shall result in one way or in the event that any person shall or shall not be nominated or shall receive a greater number of votes than others,

upon conviction thereof shall be fined in a sum not exceeding one thousand (1,000) dollars, or imprisoned in the county jail not exceeding one year, or both, in the discretion of the court.

§71. (1) If any judge of a primary shall permit a person to vote, whose vote is challenged, without the proof required in this Act; or

2. Shall knowingly and wilfully permit a person to testify as a witness contrary to the provisions of this Act; or

3. Shall knowingly permit a person to vote who is not qualified according to law; or

4. Shall knowingly receive and count more than one vote from the same person at the same primary for the same office, except as allowed by law; or

5. Shall refuse to receive the vote of a qualified primary elector at such primary, who will make the affidavit of and proof required by this Act; or

6. Shall be guilty of any fraud, corruption or manifest misbehavior; or

7. Shall open or unfold any ballot when the same is presented to be deposited in the ballot-box; or

8. Shall wilfully neglect to perform any of the duties required of him by this Act; shall, on conviction thereof, be fined in a sum not exceeding one thousand (1,000) dollars, or imprisoned in the county jail not exceeding one year, or both, in the discretion of the court.

§72. If any person wilfully or corruptly ascertains, publishes or reveals how a primary elector voted at a primary, he shall, on conviction thereof, be fined in any sum not exceeding one thousand (1,000) dollars or imprisoned in the county jail not exceeding one year, or both, in the discretion of the court.

§73. If any clerk of a primary shall wilfully neglect to perform any duty required of him as primary clerk, or shall be

guilty of fraud, corruption, or misbehavior, he shall, on conviction thereof, be fined in a sum not exceeding five hundred (500) dollars, or imprisoned in the county jail not exceeding six months, or both, in the discretion of the court.

§74. If any judge, clerk or messenger, after having been deputed by the primary judges to carry the primary poll books, tally sheets and returns of such election to the place where by law they are required to be canvassed, wilfully or negligently fails to deliver such primary poll books, tally sheets or returns within a time prescribed by law, with the seal unbroken, he shall, upon conviction thereof, be fined in a sum not exceeding five hundred (500) dollars or imprisoned in the county jail not exceeding six months, or both, in the discretion of the court.

§75. If any county, city or town clerk wilfully refuses to perform any duty required of him by this Act, he shall, upon conviction thereof, be fined in a sum not exceeding five hundred (500) dollars and shall be liable to the person injured by reason of such neglect or refusal in an amount not exceeding five hundred (500) dollars, to be recovered in an action on the case.

§76. If any person whose duty it is to canvass the returns or make a tabulated statement thereof, shall be guilty of fraud, corruption or misbehavior, in so canvassing the returns or making a tabulated statement thereof, he shall, upon conviction, be fined in any sum not exceeding five hundred (500) dollars or be imprisoned in the county jail not exceeding one year, or both, in the discretion of the court.

§77. Whoever shall wilfully and wrongfully take or carry away from the place where it has been deposited for safe keeping, or deface, mutilate or change any primary poll book, tally sheet or ballot, or any name or figure therein, shall, upon conviction thereof, be fined in a sum not exceeding one thousand

(1,000) dollars or imprisoned in the county jail not exceeding one year, or both, in the discretion of the court.

§78. Any person or member of a board or any primary judge, clerk or other officer, who is guilty of stealing, wilfully and wrongfully breaking, destroying, mutilating, defacing, falsifying, or unlawfully moving or secreting or detaining the whole or any part of any ballot-box, or any record, primary poll book, tally sheet, or copy thereof, oath, returns, or any other paper or document provided for in this Act, or who shall fraudulently make any entry, erasure or alteration therein, except as allowed and directed by the provisions of this Act, or who permits any other person so to do, shall, upon conviction thereof, be fined in a sum not exceeding one thousand (1,000) dollars, or imprisoned in the county jail, not exceeding one year, or both, in the discretion of the court.

§79. If any person shall commit any act prohibited herein or refrain from doing any act or duty required to be done herein, any if any person shall in any manner be guilty of a violation of this Act, whether the same is denominated an offense or not, and for which no punishment is herein specially provided, such person shall upon conviction thereof, be fined in a sum not less than twenty-five (25) nor more than one hundred (100) dollars, or imprisoned in the county jail not exceeding one year, or both, in the discretion of the court.

§80. An Act entitled "An Act to regulate primary elections of voluntary political associations and to punish frauds therein," approved June 6, 1889, in force July 1, 1889; an Act entitled "An Act providing for primary elections of delegates to nominating conventions of political parties or associations, and to provide for the purity thereof," approved April 24, 1899, in force July 1, 1899; an Act entitled "An Act providing for primary elections of delegates to nominating conventions of political parties or associations and to promote the purity

thereof, by regulating the conduct thereof and to support the privileges of free suffrage thereat by prohibiting certain acts and practices in relation thereto and providing for the punishment thereof," approved and in force February 10, 1898, as amended by an Act approved May 11, 1901, in force July 1, 1901, and all other Acts and parts of Acts inconsistent with this Act are hereby repealed.

§81. That the invalidity of any portion of this Act shall not affect the validity of any other portion thereof, which can be given effect without such invalid part.

Approved February 21, 1908.

[*The New York Primary law, showing the regulated convention system.*]

L. 1898, CHAP. 179.—AN ACT IN RELATION TO ENROLMENT FOR POLITICAL PARTIES, PRIMARY ELECTIONS, CONVENTIONS, AND POLITICAL COMMITTEES.

[The whole of the above act was amended by chap. 473, Laws of 1899, to read as follows.]

SECTION 1. *Short title and application of act.*—The short title of this act shall be the "Primary Election Law." Except as otherwise herein provided, it shall be controlling; (1) on the methods of enrolling the voters of a party in cities and in villages having five thousand inhabitants or more, according to the last preceding state enumeration of inhabitants; (2) on primary elections in such cities and villages; (3) on party conventions in and for any political subdivision of the state, made up wholly or partly of delegates elected in any such city or any such village; (4) on the choice, in such cities and such villages, of the members of political committees and on the conduct of political committees, in and for any political subdivision of the state, made up wholly or partly of members from any city or village: *Provided*, that in case territory to

which this act is not applicable shall at any time become incorporated with a city or village to which it shall then be applicable, only the provisions of subdivision one of section three of this act shall apply to such new territory prior to first day of registration thereafter.

SEC. 2. *Definitions and construction of act.*—The terms used in this act shall, for the purposes of this act, have application as provided in this section, unless other meaning is clearly apparent from the language or context, or manifest intent. The term "committee" shall apply to any committee chosen in pursuance hereof, or of the rules and regulations of a party, to represent the members of the party in any political subdivision of the state. The term "general committee" shall apply to the county committees in the various counties of this state in which are located any of the cities or villages to which this act is applicable, and in the city of New York to the county committee, the city committee, if any, and such borough committees as may be established by any party. The term "convention" shall apply to any assemblage of delegates of a party in and for any political subdivision of the state, duly convened for the purpose of nominating candidates for public office, electing delegates to other conventions, electing members of political committees, or transacting any other business relating to the affairs of a party. The term "primary election" shall apply to any election by the members of a party duly convened in any political subdivision of the state to which this act is applicable, of delegates to a convention, or of party committeemen, or of candidates for public office, or to any such election upon any question submitted to the vote of a party. The term "unit of representation" shall apply to an election district, a ward of a city, an assembly district, a congressional district, a senatorial district, or any other political subdivision of the state which, by the rules and regulations of a party,

may be the unit from which members of any political convention or committee to which this act is applicable, shall be chosen. The term "custodian of primary records" shall apply to those officers or boards whose duty it is, by the provisions of the election law, to provide official ballots for general elections in the respective cities and villages to which this act is applicable. The term "party" shall apply to any political organization which, at the last preceding election of a governor, polled at least ten thousand votes for governor. No organization or association of citizens for the election of city officers shall be deemed a political party within the meaning of this act, and membership in any such organization or association shall not prevent an elector from enrolling with, and acting as a member of, a political party.

[Sec. 3, containing enrolment provisions, is omitted.]

Sec. 4. *Primary elections.*—Subdivision 1. In a year when a president and vice-president of the United States are to be elected, the tenth Tuesday before the day of general election, and in other years the seventh Tuesday before the day of general election, shall be known as the annual primary day, except in cities containing a population of one million or over, and in such cities in a year when a governor is to be elected, the eighth Tuesday before the day of general election, and in any other year the sixth Tuesday before the day of general election, shall be known as the annual primary day, and in all cities and villages to which this act is applicable each party shall on such day hold primary elections for the following purposes:

First. The election of delegates to all political conventions except conventions made up of delegates who by the rules and regulations of the party are chosen by other conventions and not at primary elections, and conventions called to meet prior to such primary day for the purpose of nominating candidates to be voted for at special elections.

Second. For the nomination of all candidates for public offices to be voted for at the ensuing election who by rule adopted by a party pursuant to section twelve of this act, are to be nominated at a primary election and not at a convention; and for the election of committeemen whose duty it shall be to fill vacancies in such nominations in the cases prescribed by section sixty-six of the election law, and in the manner therein provided so far as the same is applicable thereto.

Third. For the election of all committeemen who are to be chosen at a primary election and not at a convention.

Fourth. For the election of alternates to delegates, in case the rules and regulations of a party shall so provide.

Provided, however, that in any county having within its limits a city of the first class, there shall be in each even numbered year and in each odd numbered year in which officers of the state, other than members of the legislature are to be elected, two annual primary days, the first on the seventh Tuesday before such day of general election except as above provided for a presidential year and the second on the fifth Tuesday before such day of general election. On the first of such days shall be held the primary elections for the purpose of electing delegates to such conventions as are made up of delegates representing more than one county or of electing delegates to conventions to choose delegates to conventions which are made up of delegates representing more than one county; and on the second of such days shall be held the primary elections for the election of other delegates, the nomination of candidates and the election of committeemen, as provided in this subdivision one of section four of this act. Nothing herein contained shall be construed as compelling the holding of primary elections in such a county on the first of such days in odd numbered years in case no delegates are to be voted for thereat, but in that event there shall be in such a year in such a county

but one annual primary day, and it shall be on the fifth Tuesday before such general election. The primary elections held on each primary day shall be official primary elections, and except as in this provision provided, such elections, and all inspectors thereof and public officers and boards, shall be subjected to all of the provisions and charged with all of the duties prescribed by this act for the conduct of the official primary elections on the annual primary day. (*Thus amended by chap. 504, Laws of 1907.*)

Subdivision 2. In each year when a president and vice-president of the United States are to be elected there shall be a primary election for the choice of delegates to state conventions and congressional district conventions, or of delegates to conventions by which delegates to state conventions or congressional district conventions are to be chosen, as the rules and regulations of a party may prescribe, on an additional official primary day which shall be the last Tuesday of March. The primary elections on that day shall be subject to all the provisions of this act for the conduct of primary elections on the annual primary day as prescribed in this section. The expense of official primary elections, including the expense of preparing and copying new enrolment books and the compensation herein provided to be paid to primary election inspectors, shall be paid by the same officers or boards of the city in which said primary is held, and in the same manner, as the expenses of general elections. Delegates to conventions to nominate candidates for member of congress or to conventions to elect delegates to conventions to nominate such candidates shall be elected on the annual primary day. (*Thus amended by chap. 360, Laws of 1901.*)

Subdivision 3. The custodian of primary records shall, thirty days before each official primary day, divide every ward or assembly district in a city and every village to which this act

is applicable, into primary districts, each of which shall consist of two contiguous election districts, except that in case there is an odd number of election districts in such ward, assembly district, or village, the highest numbered election district shall be a primary district by itself. There shall be two polling places in each of such primary districts which shall be designated and provided at public expense by the officers or boards whose duty it is to provide polling places for days of general election, and which shall be, so far as they are available, the same places which were used for the last preceding general election. The custodian of primary records shall assign one of the polling places in each primary district to the party which, at the last election of a governor, cast the highest number of votes for governor, and at the other polling place in such primary district there shall be held the primary elections of all other parties.

Subdivision 4. At least twenty days before each official primary day the chairman of the general committee of each party subject to the provisions of this act, shall certify and deliver to the custodian of primary records a statement of the conventions, committees and offices for which delegates, members or candidates, as the case may be, are to be elected thereat, and the number of delegates to conventions, and members of committees, to be elected in each unit of representation. The custodian of primary records shall prepare a notice of each official primary election provided for by this act, and shall publish such notice, not more than ten days and not less than five days prior to such primary election, in at least one newspaper having a general circulation in the city or village, of the political faith of each of the two parties which, at the last preceding election of a governor, cast the highest and next highest number of votes for governor. Such notice shall specify the day of such primary election, the hours during which it will be

held, the location of each polling place, the election districts whose electors may vote at each such polling place, the name of the party or parties whose primary elections will be held thereat, and the conventions, committees and offices for which delegates, members or candidates, as the case may be, will be voted for thereat. All official primary elections held in pursuance of this act shall be open from two o'clock in the afternoon to nine o'clock in the evening. All other primary elections, if any, shall be open for not less than four hours, commencing not earlier than three o'clock in the afternoon and ending not later than ten o'clock in the evening.

Subdivision 5. Notice of all unofficial primary elections shall be given in the same manner as in the case of official primary elections, except that such notice shall be given by the proper party officers and shall not be at public expense. Unofficial primary elections shall be held in such places within the unit of representation for which the primary election is held, as shall be designated by the proper political committee, but there shall be at least one polling place within and for each assembly district, ward or village. No primary election shall be held in a saloon or drinking place, or in a room which is more than one flight of stairs from the street or not readily accessible from the street. The chairman and secretary of the political committee calling an unofficial primary election, or under whose direction such primary election is held, shall post and keep posted during the election, at or near the entrance of the room where the primary election is held, so that the same is clearly visible from the street, a conspicuous notice calling attention to the place at which the primary election is being held. Unofficial primary elections shall be held at the expense of the party holding them, and, except as herein otherwise provided, shall be subject to the rules and regulations of such party.

SEC. 5. *Primary election officers.*—Subdivision 1. There shall be for each primary district two boards of primary election inspectors, one of which shall consist of the election inspectors for the election district or districts comprised within such primary district who shall, at the time, represent the party which, at the last preceding general election of a governor, have* cast the largest number of votes for governor, and the other of which shall consist of the election inspectors who shall represent the party which, at such election, cast the second largest number of votes for governor, except that in a primary district co-terminous with an election district each board shall have, as an additional member thereof, the poll clerk who shall represent the same party as the two inspectors of election. The first mentioned of said boards shall conduct the primary elections of the party represented by its members, and the second mentioned of said boards shall conduct the primary elections of all other parties at the time entitled to hold official primary elections.

Subdivision 2. The election officers who are required by section twelve of the election law to be appointed on or before the first day of October in each year, shall, in all cities and villages to which this act is applicable, be appointed, and take office, at least thirty days before the first day of October. The oath which each election officer is required to take by the provisions of section twelve of the election law, shall include his duties as a primary election officer, and all duties prescribed by this act. Removals from, and vacancies in, a board of primary election inspectors on an official primary or enrolment day shall be made and filled in the same manner as on a day of registration. Before entering upon their duties, the inspectors of each primary district shall meet and appoint one of their number chairman, or, if a majority shall not agree upon such

* So in original.

appointment, they shall draw lots for that position. The primary election inspectors serving on the official primary days, shall each be paid the sum of five dollars for each day of such service. Before entering upon his duties, each primary inspector shall make and subscribe an oath to faithfully perform his duties as such, which oath shall form a part of the return to the custodian of primary records.

SEC. 6. *Ballots, booths, supplies, etc.*—The custodian of primary records shall, not later than twenty days prior to the holding of any official primary election provided for in this act, prescribe the size, color, weight and texture of the paper to be used for the ballots at such primary election and prepare samples thereof. The colors of the ballots shall be such that those of each party shall be easily distinguishable from those of all the other parties and shall be such that the printing thereon shall be easily legible. The paper shall be of such weight and texture as to make it impossible to read or decipher the printed matter on the inside of the ballot when it shall be folded. Each ballot shall have printed or written upon its face the party name, the assembly district or ward number if any, the election district number when the election district is a unit of representation, the names of the positions to be filled, and the names of the persons voted for to fill such positions. The size of the ballot shall be large enough for the printing thereon of a complete set of names for all the positions to be filled at such primary election. All printing thereon shall be in black ink. Such sample ballots shall have the words "sample ballot of the (specifying it) party" printed thereon, and shall be exhibited for inspection during the hours within which the office of such custodian is open for business, and it shall be the duty of such custodian to furnish to each member of the board of primary election inspectors and to any elector applying for the same, a sample of the

ballot for each party. The custodian shall also furnish to party committees or to electors, applying therefor, at cost, the paper so designated to be used for ballots. Ballots to be voted on either of the two official primary days may be provided by any person. Ballots not conforming to the provisions of this section shall not be counted at any official primary election. The polling places, voting booths, guard-rails, distance markers, ballot boxes, sample ballots and other supplies required for official primary elections shall be provided and paid for by the same officers, and in the same manner, as in the case of general elections, pursuant to sections ten and eighteen of the election law. At all official primary elections a separate box with the name and emblem of the party and with the number of the election district clearly and conspicuously written or printed thereon, shall be provided at each polling place for each party participating in a primary election at such polling place and for each election district the voters of which vote at such polling place; and there shall also be a large box for the reception of the unvoted ballots. There shall be affixed to the outside of the polling place, and in at least two places on the inside thereof, and in a conspicuous manner, placards, printed with large sized and bold-faced type, which shall specify the name of the party or parties whose primary election is being held in such polling place. It shall be the duty of all primary inspectors to receive, preserve, and have at their respective polling places for delivery to electors on any official primary day, all unvoted ballots which may be delivered to them, or any of them, by any qualified elector at any time before the closing of the polls on any such primary day.

SEC. 7. *Voting at official primary elections.*—Subdivision 1. When, at any official primary election, an elector shall present himself to the board of primary inspectors, and declare his

desire to vote, he shall announce his name, residence and party, and if he shall be found to be duly enrolled as a member of such party in that primary district, the board of primary inspectors, or a member thereof, shall deliver to him unfolded one of each of the ballots of his party intended for the electors of the election district in which he resides, which are in the polling place. Thereupon, and before voting, the elector shall retire into one of the booths of the polling place. Immediately upon leaving such booth he shall be permitted to vote by delivering to one of the inspectors any ballot which conforms, in external appearance, to the provisions of this act, folded in such a way that none of the printed or written matter on the inside thereof shall be visible. The inspector to whom such ballot is so delivered shall, at once and in the presence of the elector, deposit it in the proper ballot-box. When an elector shall have offered his ballot, and it shall be in the ballot-box, he shall deliver all of the unvoted ballots which were delivered to him, each of them so folded as to conceal the inside thereof, to such inspector, and such officer shall forthwith and without opening the same or revealing the contents thereof, deposit such ballots in the box for unvoted ballots. Such unvoted ballots shall, on completion of the canvass, be removed from such box, and without being examined be destroyed. No person shall cast more than one ballot. No ballot which shall have any printing, writing or mark on the outside thereof, shall be received. No ballot shall be in any way marked for identification. At all primary elections, all ballot-boxes to be used thereat shall be opened and examined by the board of primary inspectors in the presence of the watchers, if any, before any ballots are received; and when empty shall be closed and sealed, and not be opened again until the close of the polls at such primary election. The procedure shall, as far as possible, except as changed by the

provisions of this act, be the same as that provided for the reception and deposit of ballots on the day of general election. When the elector shall have cast his ballot, that fact shall be recorded by the board of primary inspectors by the entry of the word "voted," opposite his name in the proper column of the original enrolment books provided therefor.

Subdivision 2. The right of an enrolled elector to participate in any official primary election shall be subject to challenge at any time before his ballot is deposited in the ballot-box. When any enrolled elector shall be challenged, the chairman, or one of the members, of said board, shall forthwith put to him an oath or affirmation to answer truly such questions as shall be put him, and he shall be allowed to vote if, and only if, he shall make such oath or affirmation, and shall answer in the affirmative each of the following questions:

Are you .....(using the name which he has given as his name)?

Do you reside, and have you, for thirty days last past, resided at.....(giving the address which he has given as his residence)?

Subdivision 3. From the time of the opening of the polls, until the result of the canvass of the votes cast thereat shall have been announced, and the official statements of such canvass shall have been signed, the ballot-boxes and all voted ballots shall be kept within the guard-rail. No person shall be admitted within the guard-rail during such period, except primary election inspectors, duly authorized watchers, persons admitted by the inspectors to preserve order or enforce the law, and persons duly admitted for the purpose of voting; *provided, however*, that any candidate voted for may be present at the canvass of the votes.

Subdivision 4. Watchers, not exceeding one for each election district, may be appointed by any political committee,

and by any two or more of the persons whose names are upon any ticket to be voted for at such primary election. Such watchers may be present at such polling place and within the guard-rail from at least fifteen minutes before the examination of any ballot-box at the opening of the polls of such primary election until after the announcement of the result of the canvass of the votes cast thereat and the signing of the statements thereof by the inspectors. A reasonable number of challengers, at least one person for any three or more persons of each party holding its primary election at that polling place, whose names are upon any ticket to be voted for at such primary election, shall be permitted to remain just outside the guard-rail of each such polling place, and where they can plainly see what is done within such rail outside the voting booths, from the opening to the close of the polls thereat. No person shall, while the polls are open, at any polling place do any electioneering within such polling place, or within one hundred feet therefrom, in any public street or in any building or room, or in a public manner, and no political banner, poster or placard shall be allowed in or upon such polling place on any primary day.

SEC. 8. *Canvass of votes.*—Subdivision 1. As soon as the polls at any official primary election shall close, the board of primary inspectors shall forthwith publicly canvass and ascertain the result thereof, and they shall not adjourn or postpone the canvass until it shall be fully completed. All questions touching the validity of ballots or their conformity with the provisions of this act, shall be determined by a majority vote of the board of primary inspectors. The room in which such canvass is made shall be clearly lighted, and such canvass shall be made in plain view of the public. It shall not be lawful for any person or persons during the canvass, to close, or cause to be closed, the main entrance to the room in which such

canvass is conducted, in such manner as to prevent ingress or egress thereby. The board of primary inspectors shall proceed to canvass the vote by counting the ballots found in the ballot-boxes without unfolding them, except so far as to ascertain that each ballot is single, and by comparing the ballots found in each box with the number shown by the enrolment books to have been deposited therein. If the ballots found in any box shall be more than the number of ballots so shown to have been deposited therein such ballots shall be replaced, without being unfolded, in the box from which they were taken, and shall be thoroughly mingled therein, and one of the inspectors designated by the board shall, without seeing the same and with his back to the box, publicly draw out as many ballots as shall be equal to such excess, and, without unfolding them, forthwith destroy them. If two or more ballots shall be found in the ballot box so folded together as to present the appearance of a single ballot, they shall be destroyed if the whole number of ballots in such ballot-box exceeds the whole number of ballots shown by the enrolment books to have been deposited therein, and not otherwise. If there lawfully be more than one ballot-box for the reception of ballots voted for at any one polling place, no ballot found in the wrong ballot-box shall be rejected, but shall be counted in the same manner as if found in the proper box, if such ballot shall not, together with the ballots found in the proper ballot-box, make a total of more ballots than are shown by the enrolment books to have been deposited in the proper box. The chairman only of the board of primary inspectors shall unfold the ballots taken from the ballot-box. When a ballot is not void, and a primary election inspector or a duly authorized watcher shall, during the canvass of the vote, declare his belief that any particular ballot has been written upon or marked in any way for the purpose of identification, the inspectors shall write on the

back of such ballot "Objected to because marked for identification," and shall specify over their signatures upon the back thereof the mark or markings upon such ballot to which objection is made. The votes upon each such ballot shall be counted by them as if not so objected to. If any ballots shall be rejected as void, the reason for such rejection shall be written on the back thereof by the chairman of the inspectors, or by an inspector designated by him. All ballots rejected as void, and all ballots protested as marked for identification, shall be inclosed in a separate sealed package, which shall be indorsed on the outside thereof with the names of the inspectors, the designation of the election district, and the number and kind of ballots contained therein. Such package shall be filed by the chairman of the board of inspectors with the original statement of the canvass. A statement of the number of ballots protested as marked for identification, and of the number thereof rejected as void, shall be included in each of the statements of the result of the canvass. If requested by any watcher, the inspector shall, during the canvass, exhibit any and all ballots cast at such primary election to such watcher, fully opened and in such condition that he may fully and carefully read and examine the same, but such inspector shall not allow any such ballot to be taken from his hand.

Subdivision 2. Immediately upon the completion of such canvass, the board of primary inspectors in each primary district shall make public oral proclamation of the result thereof, and shall make a written statement of such result for each election district in such primary district, and also a duplicate thereof, which shall be known as the duplicate statement. Immediately after the completion of such statements, such board shall file the original thereof with the custodian of primary records, and shall file the duplicate statement with the clerk of the city or village. In any county which contains

a city or village to which this act is applicable and has territory greater than such city or village, the officers presiding at primary elections held in the political divisions of such county outside of such city or village shall file with the custodian of primary records immediately after the holding of every such primary election a sworn statement of the delegates and members of general committees elected thereat.

Subdivision. 3. At all reasonable times any watcher shall have reasonable opportunity to make a transcript of such statement, or any portion thereof, and any candidate shall be entitled to receive, upon demand, a written statement showing the result of the primary election so far as he is concerned. In the case of a primary election at which persons are elected to any convention or committee from election districts as the unit of representation, the board of primary inspectors shall promptly after canvassing the vote, deliver to each of the per sons who receive the largest number of votes as delegates to, or as members of, such convention or committee, or to the respective persons authorized in writing by them to receive the same, a certificate stating the total number of votes cast for the respective candidates and the number thereof received by such persons respectively. Such certificate shall be the evidence of the election of such persons, and shall entitle them and each of them to be placed upon the roll of, and be admitted to, such convention or committee. After the close of the canvass of the votes at primary elections, the ballots cast thereat, except those rejected as void or protested as marked for identification, shall be replaced in the ballot-boxes from which they were respectively taken, and such ballot-boxes shall then be securely locked and sealed, and shall be returned to the officer from whom they were received, who shall safely keep the same; subject, however, to be produced upon the order of any court of record or judge thereof, for not less than thirty

days after such primary election, and until all suits or proceedings before any court or judge touching the same shall have been finally determined, when the ballots shall be removed and, without examination, destroyed. The custodian of primary records shall not be required to retain on file the enrolment books and other papers required to be filed with him by the board of primary inspectors for a period of more than three years unless otherwise directed by the district-attorney of the county or a judge or justice of a court of record. (*Thus amended by chap. 207, Laws of 1905.*)

Subdivision 4. The custodian of primary records shall forthwith proceed to canvass the statements so filed (except so far as they relate to the election of delegates to conventions or members of committees from election districts as the unit of representation), and shall complete such canvass within seventy-two hours from midnight of the day on which the primary election was held. Such custodian shall thereupon prepare certified statements of the result of the primary elections of each party participating therein and shall make up the rolls of the conventions for which delegates were elected at such primary elections, so far as such conventions are to be made up of such delegates, and add thereto the names of any delegates entitled to act in such conventions from any of the political divisions of such county not included within any city or village to which this act is applicable, as contained in the statements filed with him pursuant to subdivision two of section eight of this act, and shall promptly mail and, if requested, deliver one copy thereof to the respective secretaries of the proper political committees of the several parties participating in such primary election. It shall be the duty of the custodian of primary records to prepare a certified transcript of such statements, or any portion thereof, and deliver the same to any individual or political committee upon demand on pay-

ment of five cents for every one hundred words so certified. Wherever the custodian of primary records is a salaried officer, the fees received by him for making such certified transcripts, shall be paid into the public treasury. The secretary of any political committee shall be entitled to receive, upon demand, a certificate of the result of any such election in any unit of representation comprised within the territory within which such committee represents a party. Such custodian shall also promptly deliver upon demand to any person, who, by the statements so filed and canvassed, is shown to have been elected as delegate to a convention or a member of a committee, or to have been nominated as a candidate for public office, a certificate of such election or nomination, as the case may be. Such certificate or a duplicate thereof, shall be sufficient to entitle the person named therein to be admitted to the convention or committee to which he shall have been elected, and upon filing such certificate in the proper office and at the proper time prior to election day, a person nominated for public office at such primary election shall be entitled to have his name printed upon the official ballot of his party, as if he had been nominated in the manner provided in section fifty-six of the election law. Nothing herein contained shall be construed as preventing the holding of a convention prior to the receipt by the secretary of the proper political committee of the certificate provided for in this section, provided the roll of such convention shall be made up of those delegates who have been duly elected as shown by the original statements of the boards of primary inspectors in the various election districts, and in the statements filed pursuant to subdivision two of section eight hereof.

SEC. 9. *Committees, and rules and regulations of parties.*— Subdivision 1. Each party shall have a general committee for each county, except that in the city of New York there may

be, in lieu of, or in addition to, a general committee for each county wholly therein, a general city committee or general borough committees, or both, as the rules and regulations of the party may prescribe, and except that in each city other than said city of New York, and cities of the first class, if it be desired by a majority of the members of such general committees elected from the wards of such city, there shall be for such city a city committee to consist of such members so elected from such wards, who shall have power to perfect their own organization under such rules and regulations as they may prescribe for the conduct of the affairs of such party affecting such city and the wards thereof. Any party may also have committees in and for such other political subdivisions as its rules and regulations may prescribe. All members of general committees, and assembly district and ward committees, chosen in or from cities of the first class except as otherwise herein provided, shall be elected at the primary elections, on the annual primary day of each year. In the other cities and villages to which this act is applicable, except as otherwise provided in this act, there shall be elected at the primary elections on such day either the members of all general committees elected from such cities or villages, or the members from such cities or villages of the conventions or committees by which members of the general committees are to be appointed, and in such cities and villages the rules of the party may determine whether members of general committees shall be elected at primary elections or by conventions or committees the members of which shall be elected on the annual primary day as above provided, or by conventions or committees which shall have been chosen by delegates who shall have been elected on the annual primary day as above provided. The times when committees elected at primary elections shall take office shall be determined by the rules and regulations of the respec

tive parties, except that such time shall not be later than the first day of January succeeding their election. On the day fixed by the rules and regulations, constitutions or by-laws of the party, the members of each general county committee or city committee shall meet and organize. They may proceed to make and adopt rules and regulations, but unless so adopted, the rules and regulations adopted by the last preceding county or city committee of said party in said county or city shall remain in full force and effect until repealed or amended in accordance with the provisions of this act. Members of committees shall be apportioned among the various units of representation entitled to representation therein according to the rules hereinafter prescribed for the apportionment of delegates to conventions. Members of committees in villages shall be apportioned and shall hold office as shall be provided in the rules and regulations of parties. Each county or city committee and the officers thereof shall have all the power and authority and shall perform all the duties, in respect to the nominations of officers to serve at general elections, conferred upon the general committee, the county committee, the city committee, the executive committee, or the officers thereof, given to any party in such city or county by section twelve of the election law. (*Thus amended by chap. 167, Laws of 1901, and chap. 595, Laws of 1903.*)

Subdivision 2. The rules and regulations of parties, and of the conventions and committees thereof, shall not be contrary to, or inconsistent with, the provisions of this act, or of any other law, and shall not be amended except upon reasonable notice. Every political committee shall, within three days after its organization, file with the proper custodian of primary records a certificate specifying the names and addresses of its chairman and secretary, and shall within the same period of time after its adoption file with said custodian a

transcript of every rule and regulation of said party in said county and of every amendment thereof duly certified in like manner. The rules and regulations of a party may prescribe the amount of annual dues to be paid by each member of such committee to such committee, for the purpose of defraying the expenses thereof, and may contain a provision precluding any member who may fail to comply therewith, from participating in the meetings of such committee.

SEC. 10. *Conventions.*—The delegates to every party convention in and for any political subdivision, chosen in any city or village to which this act is applicable, shall be apportioned among the units of representation in such city or village as nearly as possible upon the basis of the number of votes cast therein for the party candidate for governor at the last preceding general election, except that in any county which is not wholly included within the boundaries of a city of the first class, the general committee of the party may, by its rules and regulations, continue any existing system of representation in conventions. The general committee of any party may also by its rules and regulations apportion the voting power of the delegates to a convention in accordance with such vote for governor. If the boundaries of any political subdivision serving as units of representation shall have been changed since the last preceding general election at which a governor was elected, the party vote for governor at such election within the limits of such newly constituted units of representation shall be estimated as closely as possible and the apportionment of delegates shall be made in accordance with such estimate. The room designated for the meeting-place of any convention shall have ample seating capacity for all delegates and alternates. Every convention shall be called to order by the chairman of the committee with whom the call originates or by a person designated in writing for that purpose by such

chairman, and such chairman or person so designated shall have the custody of the roll of the convention until it shall have been organized. No convention shall proceed to the election of a temporary chairman or transact any business until the time fixed for the opening thereof has arrived and at least a majority of the delegates or respective alternates named in the official roll shall be present. The roll-call upon the election of temporary chairman shall not be delayed more than one hour after the time specified in the call for the opening of the convention, *provided* a majority of the delegates are present. The temporary chairman of the convention shall be chosen on a call of the roll, and as the name of each delegate is called he shall rise in his place and declare his choice for such officer. The person who calls the convention to order shall exercise no other function than that of calling the official roll of the delegates upon the vote for temporary chairman and declaring the result thereof. The committees of a convention shall be appointed by the convention, or by the temporary chairman, as the convention may order. Unless the convention shall otherwise order, the permanent chairman shall be chosen on roll-call. The permanent officers shall keep the records of the convention, and, within forty-eight hours after the adjournment thereof, shall certify and file the same in the office of the custodian of primary records. Before entering upon their duties, the temporary and permanent chairman of every convention, and the chairman and members of any committee on contested seats therein, shall respectively take an oath to faithfully perform the duties of their offices, which oath may be taken before any officer authorized by law to administer an oath, and shall form a part of, and be filed with, the records of the convention. Each convention shall decide all questions as to contested seats therein. All witnesses examined by or before such committee on contested seats shall be sworn by

the chairman or a member thereof to tell the truth, the whole truth and nothing but the truth concerning the matters and things then being investigated by said committee. Any justice of the supreme court within the judicial district in which a convention is about to be held or any county judge of a county in which a convention is about to be held, shall have power, upon application in writing duly verified, stating the purpose and object thereof, to issue a subpoena to any elector applying therefor, requiring any person within the same county or city in which a convention is about to be held, to appear before such convention and testify before a committee on contested seats thereof when appointed concerning any matter which may be investigated by said convention or committee and to produce thereat public record or records of a primary election or a convention of the party of which such convention is about to be held. Such justice or judge shall issue such subpoena upon sufficient ground being shown therefor, but he may deny the application if he deems it frivolous or scandalous. Witnesses attending pursuant to such subpoena shall be paid by the applicant the same fees which witnesses are entitled to receive upon trial of an action in a court of record. Any elector desiring to contest the right of any other elector to his seat in a convention shall file with the custodian of primary records a notice of such contest stating the name and residence address of the person whose seat is to be contested, at least forty-eight hours before the time fixed for holding such convention; *provided*, that if a convention is called to be held in less than forty-eight hours from the closing of the polls of the primary election such notice shall be served on the temporary chairman of the convention instead. It shall be the duty of said custodian of primary records to transmit a copy of such notice of contest to the person whose seat is to be contested, either by personal service upon him or through the

mail, within twenty-four hours after the receipt of such notice. All oaths administered under the provisions of this act are hereby declared to be oaths required by law, and to be necessary for the ends of public justice. The rules and regulations of the party may prescribe the method of substituting delegates in conventions. No convention, composed of delegates elected in accordance with this act, shall be held until after the primary day on which delegates thereto or delegates to conventions to elect delegates thereto shall have been elected.

SEC. 11. *Jurisdiction of, and review by, the courts.*—Any action or neglect of the officers or members of a political convention or committee, or of any inspector of primary election, or of any public officer, or board, with regard to the right of any person to participate in a primary election, convention, or committee, or to enrol with any party, or with regard to any right given to, or duty prescribed for, any elector, political committee, political convention, officer or board, by this act, shall be reviewable by the appropriate remedy of mandamus or certiorari, as the case may require. In addition thereto, the supreme court, or any justice thereof within the judicial district, or any county judge within his county, shall have summary jurisdiction, upon complaint of any citizen, to review such action or neglect. Such a complaint shall be heard upon such notice as the said court or justice or judge thereof shall direct. In reviewing such action or neglect, the court, justice, or judge shall consider, but need not be controlled by, any action or determination of the regularly constituted party authorities upon the questions arising in reference thereto, and shall make such decision and order as, under all the facts and circumstances of the case, justice may require. For any of the purposes of this section, service of a writ of mandamus, certiorari, order or other process of said court or justice, or

judge thereof upon the chairman or secretary of such convention, committee, or board shall be sufficient.

SEC. 12. *Nomination of candidates at primary elections.*—In case the general committee representing a party in any city or village to which this act is applicable, or in a county wholly within any such city, or in a borough of any such city, shall adopt, by a majority vote, a rule that the nomination of that party's candidates for specified public offices to be filled wholly from such subdivision shall be made at the primary elections of the party, then so long as such rule remains in force, the nomination of that party's candidates, for the public offices specified in such rule shall be made by the enrolled members of the party at the official primary elections of the party held on the annual primary day. Such rule shall be adopted at least thirty days prior to said annual primary day and published, in the manner in which notices of primary elections are required to be published by this act, at least twenty days before such primary election. In case nominations for city or ward offices are made in primary election districts under a rule adopted as prescribed in this section, certificates showing the result of the votes for the several candidates for nomination in the several districts shall be made by the boards of inspectors thereof and filed in the office of the custodian of primary records who shall determine from such certificates the persons nominated for such offices. (*Thus amended by chap. 202, Laws of 1900.*)

SEC. 13. *Application of provisions to political parties.*—The provisions of this act shall apply to all political parties. (*Thus amended by chap. 296, Laws of 1907.*)

SEC. 14. *Application of this act to cities of the third class and villages.*—No city of the third class or village shall be subject to the provisions of this act, unless the general committee for the county in which such city or village is situated, of each

party entitled to be represented by inspectors of election in such city or village, shall have adopted a resolution declaring that they desire to come in under the provisions of this act, and shall have filed, on or before the first day of July, in any year, a duly attested copy thereof with the secretary of state and with the county clerk of such county; or unless the electors of such city or village shall have voted at a general election to come in under this act. In such case such city or village shall be subject to the provisions of this act on and after the first day of registration next succeeding, and the custodian of primary records shall provide the necessary enrolment books prior to such day. The question whether or no any such city or village shall come in under this act shall be submitted to the electors thereof whenever the general committee of either of said parties, for the county in which such city or village is situated, shall by resolution request such submission and shall file a duly attested copy of such resolution with the secretary of state and with the county clerk, not less than sixty days before any general election, or whenever not less than sixty days before any general election the electors of any city or village to which this act is applicable equal in number to at least one-tenth of the votes cast therein at the next preceding election for state officers shall by a petition similar in form and manner of execution to the petition required by the election law for independent nominations, request the mayor of such city or the board of trustees of such village to submit the question whether this act shall be made applicable to such city or village to the electors thereof at a general election; in either of which cases it shall be the duty of the proper council or board or other officers of such city or village to provide by ordinance, resolution or otherwise, for the submission of such question to the electors thereof at the next ensuing general election; and such submission shall so far as possible, be made in the man-

ner now prescribed by law for submitting proposed amendments to the constitution of the state to the electors thereof. A similar procedure shall take any such city or village which has so elected to come within the provisions of this act out of such provisions and make them thereafter no longer applicable to such city or village; but if the decision to come under this act was made at a general election, such decision can be changed only at a general election.

SEC. 14*a*. *Application to certain cities of the second class.*—If in a city of the second class the electors were not enrolled pursuant to the primary election law on the days for registration in nineteen hundred and five, the provisions of such act in relation to the holding of primary elections shall not apply to such city prior to the general election in nineteen hundred and six, but primary elections shall continue to be held in such city in the manner in which such elections were held before such city became a city of the second class. The provisions of the primary election law requiring the enrolment of electors shall apply to such city on the registration days in the year nineteen hundred and six and subsequent to the general election in that year all the provisions of the primary election law shall apply to such city. (*Thus added by chap. 466, Laws of 1906.*)

SEC. 15. *Repealing clause.*—All acts and parts of acts inconsistent with the provisions of this act are hereby repealed, in so far as they apply to the parties and in the places to which this act is, or shall be applied; except that nothing herein contained shall be construed as preventing the use of the existing original enrolment books at any primary election held prior to the first day of January in the year nineteen hundred, and said enrolment books shall continue and be used at all primary elections held under the provisions of this act prior to that time; *provided, however*, that in case new enrolment books shall have been prepared by the custodian of primary records,

pursuant to the provisions of subdivision nine of section three of this act, such new enrolment books shall be used at all such primary elections.

[*The Florida law, showing the extent to which the management of the primaries is left to the party officials in the South.*]

CHAPTER 5014—[NO. 130]

An Act to Regulate the Holding of Political Primary Elections in the State of Florida, for Nominating Candidates for Any Office under the Laws of this State, and for Nominating Delegates to Political Conventions.

SECTION 1. *Be it enacted by the legislature of the State of Florida:* That whenever the State Executive or Standing Committee of any political party in this state or any congressional district or county of this state, shall decide to take by primary election the sense of the members of said party as to the proper persons to be made delegates to any convention to be held for the purpose of that party, or to take the sense of the members of the said party as to their choice for United States Senator, or as to the proper person or persons to be presented on behalf of that party to the voters of the state, congressional district, or county, as the case may be, at any election to be held in the several counties under the laws of this state, at least thirty (30) days' notice shall be given in some newspaper published in the county or counties in which such election is to be held, or by posting a notice of such primary election in each ward or precinct of the county, if there be no newspaper published in said county, of the place where the voters belonging to that party are requested to meet for the purpose of acting in relation to the nomination of delegates or candidates as herein above stated.

Such notice shall also state the day on which such election is to be held, and the hours within which it is to be held, and

the names of the inspectors appointed to hold such election and receive the votes that may be cast thereat, and make report and return thereof, and the time when such return and report shall be made to the committee directing such meeting to be held.

SEC. 2. That no person can vote or take part in the proceedings of any primary election, who is not by the laws of the State a lawful elector, who has not paid his poll tax legally due, not less than ten days before such primary election is held, and authorized to vote in any legal election in the ward or precinct for which such primary election is held.

SEC. 3. That the Executive or Standing Committee calling such primary election may declare the terms and conditions on which legal electors offering to vote at such election shall be regarded and taken as proper members of the party at whose instance or in whose interest such primary election has been called or may be held and therefore entitled to vote at such election as a member of that party.

SEC. 4. That any recognized member of the party in whose interest such election is held may challenge the right of any person offering to vote at such election, and the inspectors authorized to hold and holding such election shall determine on the evidence then furnished whether the person so offering is entitled to vote at such election, and shall receive or reject such votes so offered as to them the evidence for or against the right of the persons so offering to vote shall reasonably warrant.

SEC. 5. That the inspectors holding such primary election under the provisions of this act may of their own motion, or in any case of the challenge of any person offering to vote, if they deem there is any doubt of the propriety under the provisions of this act of the vote so offered, require of the person o offering to vote, his oath to the fact which authorized the vote, and if the person so offering to vote declines to make oath so demanded, his vote shall be rejected.

SEC. 6. All votes at such primary elections shall be by ballot, which shall conform to the requirement of the general election law of this state.

SEC. 7. The report to the committee so directing such primary elections by the officers holding the same shall be in writing, with which the original ballot shall be returned and the poll list of the voters made at the time of the voting, and the reasons on which any challenged vote was received or rejected. Said committee shall carefully examine the returns and reports so made and thereupon decide who are the persons that have been chosen by the majority vote cast in the primary election for delegates to the convention, and from what ward or precinct, if the meeting were for the appointment of delegates to such convention, or what person or persons by a majority vote have been elected as candidates of the party, as the case may be, for the office or offices to be filled at the approaching election; *Provided*, a second primary election shall be held within four weeks after the first primary election, to choose in all cases where no person shall have received a majority of all the votes cast for the several candidates receiving the highest vote in the first primary election.

When several officers are to be voted for, for the same office, as in the case of county commissioners, a number of candidates not exceeding twice the number not nominated in the first primary shall be voted for in the second primary, and those candidates receiving the highest vote in the second primary to the number remaining to be chosen shall be considered chosen.

SEC. 8. That if any person who is not entitled to vote under this act, vote at any primary election held hereunder, or vote more than once, or personate another person, or in any name other than his own legal name, or in any manner disturb the orderly proceedings of any such election, or intimidate, or in

any manner attempt to intimidate or deter from voting, or bribe, or attempt to bribe, any authorized voter, or impose, or attempt to impose, on any duly authorized voter, a ticket or ballot other than it appears on its face to be, such person or persons shall be guilty of a misdemeanor, and on conviction shall be fined not less than ten dollars or be sentenced to hard labor for more than three months, one or both, at the discretion of the court trying the case.

SEC. 9. That the inspectors who may hold such primary elections under this act, and return the votes, proceedings and action thereof, herein provided, shall, before assuming the duties, make oath before some officer authorized to administer the oath, and in the absence of such officer the inspectors shall administer the oath to each other, that they will honestly, faithfully, and to the best of their ability, do and perform all the duties of their respective offices, and any wilful violation of said oath or of any other oath taken under the provisions of this act, shall be held to be perjury, and shall be punished as provided by the laws of the state for the crime of perjury, *Provided*, that at any primary election ordered by any County Executive Committee or Standing Committee, where the inspectors appointed shall not be present from any cause, the members of the party present may appoint from their number a full set of inspectors and clerk, who shall swear themselves in and proceed to hold such election ordered the same as if regularly appointed.

The sheriff is required to see that good order is preserved at such meetings, and may arrest and present for commitment to the nearest officer clothed with the power of a justice of the peace, any and all persons who may be guilty of any violation of the provisions of this act.

SEC. 10. That the County Executive or Standing Com mittee of the political party calling such primary elections is

hereby authorized to regulate the amount to be paid the inspectors and clerks of such election, and to provide funds for defraying expenses of conducting such elections by assessing for the various county candidates for nomination at such primary election; *Provided*, that when any candidate for United States Senator, or any state officer or member of Congress is a candidate before such primary, then the State Executive Committee or the Congressional Committee, shall regulate the amount to be assessed such candidate or candidates and prorate the money so collected among the several counties in which such primaries are to be held, and pay the same over to the County Executive Committees of the several counties to assist in defraying the expenses of such primaries: *Provided*, that no candidate shall be assessed more than 5 per cent. of the annual compensation of the office, for which he is a candidate.

SEC. 11. That in the appointment of inspectors and clerks of such primary eletction, the committee making such appointments shall, so far as possible, select qualified voters from a list of names agreed upon by a majority of the candidates before such primary election; *Provided*, that such agreed list is filed with the committee.

SEC. 12. That except as herein provided, all elections at primary elections under this act, shall be regulated by the election law of the state in force at the time such primary election is held as nearly as the same can be done.

SEC. 13. That the Executive or Standing Committee, when petitioned by a majority of the qualified electors of the same party the committee belongs to, shall call and cause to be held a primary election as provided for in this act.

SEC. 14. The primary election of a political party for all purposes shall be held throughout the state on the same day, but the primary elections for different political parties may be

held on separate days. Such primary elections shall be held not less than sixty (60) days before the date for the general election.

SEC. 15. No county, state or congressional committeeman, who is a candidate before any primary election, shall act or serve as such committeeman, and any vacancy caused by such disqualification may be filled by the County, State or Congressional Committee, as the case may be.

SEC. 16. The County Executive or Standing Committee shall hear and determine all contests or protests filed by any county candidate before such primary election, and when any contest or protest is filed with the county committee challenging the returns from any precinct or objecting to any decision of the committee, such county committee shall hear and determine such contest or protest, preserving in writing all the evidence heard and considered, and all rulings and decisions made by said committee.

The decisions and rulings of the County Committee shall be final as to any county candidate before such primary. If any candidate for a state or congressional office is not content with the decision of the County Committee affecting his candidacy in said county, said candidate shall file within twenty (20) days after the result is declared, with the chairman of the State or Congressional Executive Committee, as the case may be, his protest as to the result of the election in any county, whereupon the chairman of the State or Congressional Executive Committee shall, after filing of such protest, cause notice of such protest to be given to the County Executive Committee wherein irregularities are alleged to exist, whereupon it shall be the duty of such County Committee to immediately forward a certified copy of such evidence submitted to and considered by them, and their rulings and decisions thereon to the State or Congressional Committee, as the case

may be, and such committee shall review the finding and decisions of the county committee and its decisions shall be final.

SEC. 17. The chairman of the State or Congressional Committee, as the case may be, shall cause the names of the successful candidates for offices voted for in more than one county who were chosen by a majority vote to be certified to the county committee of each county of the state, and said committee shall certify the same to the county commissioners of said county, to be placed on the official ballot at the general election.

SECTION 1.[1] That sec. 18, of chap. 5014, of the Laws of Florida, entitled "An Act to regulate the holding of political primary elections in the State of Florida for nominating candidates for any office under the laws of this state, and for nominating delegates to political conventions," approved May 31, 1901, is hereby amended so as to read as follows:

SEC. 18. Whenever any political party in any municipality of ten thousand population or more in this state shall have determined, by its city committee, or, in the absence of a city committee, then by its county committee, to hold a primary election for the nomination of candidates for city offices, such primary election shall be held in all respects in conformity with the provisions of this act, so far as said provisions can be made to apply. In any case where there is no city committee of the political party within any such city where a primary election is to be held, the county committee for such county shall make provision for and designate a city committee to serve until their successors shall be elected at the city primary. The city committee shall call and make all necessary regulations for the holding of such primary to the same extent that county committees are authorized to do under the provisions of this act.

[1]Amended 1903.

SEC. 2. That all laws and parts of laws in conflict with this act be and the same are hereby repealed.

Approved June 3, 1903.

CHAPTER 5249—[NO. 144.]

An Act to Provide for the Registration of Voters Before the Holding of Primary Elections

Section 1. *Be it enacted by the legislature of the State of Florida:* That whenever the State, Congressional, or County Committee of any political party which in the last preceding election cast 40 per cent. of the votes cast, shall have called a primary election to be held prior to the time for registration for a general election, the registration books of each county shall be open in each election district for four weeks for registration of such primary.

In counties of thirty thousand or more population by the last census the books shall be closed four weeks before the primary and in other counties two weeks before the primary.

Approved June 4, 1903.

[*The Wyoming rudimentary type of law.*]

CONVENTION OR PRIMARY MEETING DEFINED

SEC. 219. A convention or primary meeting within the meaning of this act is an organized assemblage of electors or delegates representing a political party.

[S. L. 1890, chap. 80, sec. 85.]

State *ex rel.* Bennett *v.* Barber, 4 Wyo., 56.

APPLICATION OF LAW—HOW MEETINGS SHALL BE CALLED

SEC. 220. Any caucus or public meeting of the qualified voters of a county, district, city, town, ward of a city or town, or polling precinct, of any specified party or portion of such voters, for the nomination of candidates to be supported at any

state, general, county, district, municipal or other election, or for the selection of delegates to any political convention, or for the appointment of any political committee, may be called by written or printed notice, specifying that the same is to be held in accordance with the provisions of this title, and such provisions thereof shall then apply to the conduct and proceedings of such meeting.

[S. L. 1897, chap. 53, sec. 24.]

OFFICERS OF MEETING

SEC. 221. The call for the meeting shall designate by name of office the person who shall call the meeting to order; and the person so designated shall call the meeting to order and preside until a chairman shall be chosen. In case, however, the person so designated shall be absent at the time appointed, the meeting may choose a temporary chairman to act in place of such person. The organization of the meeting by the choice of a chairman, clerk and such other officers as the meeting may require, shall be the first business in order.

[S. L. 1890–91, chap. 32, sec. 32.]

WHEN BALLOT SHALL BE TAKEN

SEC. 222. A ballot shall be taken for the choice of any candidate, delegate or member of a political committee to be selected by such meeting, in case five or more of the persons present and entitled to vote therein shall in any case so request in writing; and in case of such written request, a ballot shall be taken for the choice of the chairman of such meeting unless the meeting shall vote to dispense with such ballot. Such written request may be presented to the presiding officer for the time being, by motion or otherwise at any time, before a choice of the officers to which it relates is effected.

[S. L. 1890–91, chap. 32, sec. 3.]

CHALLENGE OF VOTERS

SEC. 223. Any person offering to vote at any such meeting may be challenged by any person present as to whether his political faith is in accordance with that of the party or voters holding such meeting. Upon such challenge, the party challenged, before he shall be permitted to vote, shall be required to make a sworn statement before the presiding officer of such meeting that his political faith is in accordance with the party or voters holding such meeting; and in case he refuses to make such sworn statement, his vote shall not be received.

[S. L. 1890–91, chap. 32, sec. 5.]

PRESERVATION OF BALLOTS

SEC. 224. The clerk chosen at such meeting shall, at the request in writing of five voters entitled to act therein, safely keep all ballots cast, and check lists used therein for a period of three months, and shall produce the same if called for by any court of justice.

[S. L. 1890–91, chap. 32, sec. 7.]

REGULATIONS MAY BE ADOPTED BY PRIMARY

SEC. 225. Nothing herein shall prevent the enforcement at any primary of further regulations not inconsistent with the provisions of this title.

[S. L. 1890–91, chap. 32, sec. 8.]

NOMINATIONS OF CANDIDATES MAY BE BY CONVENTION OR PRIMARY

SEC. 226. Any convention or primary meeting as herein defined, held for the purpose of making nominations to public office and also electors to the number herein specified may nominate candidates for public office to be filled by election.

[S. L. 1890, chap. 80, sec. 84.]

[*The Iowa law providing for a non-partisan primary (in part) (chap. 48, 1907).*]

SEC. 5. Candidates to be voted for at all general municipal elections at which a mayor and four councilmen are to be elected under the provisions of this act shall be nominated by a primary election, and no other names shall be placed upon the general ballot except those selected in the manner hereinafter prescribed. The primary election for such nomination shall be held on the second Monday preceding the general municipal election. The judges of election appointed for the general municipal election shall be the judges of the primary election, and it shall be held at the same place, so far as possible and the polls shall be opened and closed at the same hours, with the same clerks as are required for said general municipal election.

Any person desiring to become a candidate for mayor or councilman shall, at least ten days prior to said primary election file with the said clerk a statement of such candidacy, in substantially the following form:

State of Iowa,.....County.—*ss.*

I (.....) being first duly sworn, say that I reside at.....street, city of.....county of.....State of Iowa; that I am a qualified voter therein; that I am a candidate for nomination to the office of (mayor or councilman) to be voted upon at the primary election to be held on the .....Monday of.....19.. and I hereby request that my name be printed upon the official primary ballot for nomination by such primary election for such office.

(Signed).....

Subscribed and sworn to (or affirmed) before me by.....
.....on this....day of.....19..

(Signed).....

and shall at the same time file therewith the petition of at least twenty-five qualified voters requesting such candidacy. Each petition shall be verified by one or more persons as to the qualifications and residence, with street number, of each of the persons so signing the said petition, and the said petition shall be in substantially the following form:

PETITION ACCOMPANYING NOMINATION STATEMENT

The undersigned, duly qualified electors of the city of....., and residing at the places set opposite our respective names hereto, do hereby request that the name of (name of candidate) be placed on the ballot as a candidate for nomination for (name of office) at the primary election to be held in such city on the .....Monday of.....19..... We further state that we know him to be a qualified elector of said city and a man of good moral character and qualified in our judgment for the duties of such office.

Names of Qualified Electors	Number	Streets

Immediately upon the expiration of the time of filing the statements and petitions for candidacies, the said city clerk shall cause to be published for three successive days in all the daily newspapers published in the city, in proper form, the names of the persons as they are to appear upon the primary ballots, and if there be no daily newspaper, then in two issues of any other newspapers that may be published in said city; and the said clerk shall thereupon cause the primary ballots to be printed, authenticated with a facsimile of his signature. Upon the said ballot the names of the candidates for mayor, arranged alphabetically, shall first be placed, with a square at the left of each name, and immediately below the words

"Vote for one." Following these names, likewise arranged in alphabetical order, shall appear the names of the candidates for councilmen, with a square at the left of each name and below the names of such candidates shall appear the words, 'Vote for four." The ballots shall be printed upon plain, substantial white paper, and shall be headed:

CANDIDATES FOR NOMINATION FOR MAYOR AND COUNCILMEN OF .....CITY AT THE PRIMARY ELECTION

but shall have no party designation or mark whatever. The ballots shall be in substantially the following form:

(Place a cross in the square preceding the names of the parties you favor as candidates for the respective positions.)

OFFICAL PRIMARY BALLOT

CANDIDATE FOR NOMINATION FOR MAYOR AND COUNCILMEN OF .....CITY AT THE PRIMARY ELECTION

For Mayor

☐ (Name of Candidate.)

(Vote for one.)

For Councilman

☐ (Name of Candidate.)

(Vote for four.)

Official ballot attest:

(Signature)

.....

City Clerk.

Having caused said ballots to be printed, the said city clerk shall cause to be delivered at each polling place a number of said ballots equal to twice the number of votes cast in such polling precinct at the last general municipal election for mayor. The persons who are qualified to vote at the general municipal election shall be qualified to vote at such primary election, and challenges can be made by not more than two persons, to be appointed at the time of opening the polls by

the judges of election; and the law applicable to challenges at a general municipal election shall be applicable to challenges made at such primary election. Judges of election shall, immediately upon the closing of the polls, count the ballots and ascertain the number of votes cast in such precinct for each of the candidates, and make return thereof to the city clerk, upon proper blanks to be furnished by the said clerk, within six hours of the closing of the polls. On the day following the said primary election the said city clerk shall canvass said returns so received from all the polling precincts, and shall make and publish in all the newspapers of said city at least once, the result thereof. Said canvass by the city clerk shall be publicly made. The two candidates receiving the highest number of votes for mayor shall be the candidates and the only candidates whose names shall be placed upon the ballot for mayor at the next succeeding general municipal election, and the eight candidates receiving the highest number of votes for councilman, or all such candidates if less than eight, shall be the candidates and the only candidates whose names shall be placed upon the ballot for councilman at such municipal election.

All electors of cities under this act who by the laws governing cities of the first class and cities acting under special charter would be entitled to vote for the election of officers at any general municipal election in such cities, shall be qualified to vote at all elections under this act; and the ballot at such general municipal election shall be in the same general form as for such primary election, so far as applicable, and in all elections in such city the election precincts, voting places, method of conducting election, canvassing the votes and announcing the results, shall be the same as by law provided for election of officers in such cities, so far as the same are applicable and not inconsistent with the provisions of this act.

[*Wisconsin Law, Providing for Nomination by Petition only, with the option of a Preliminary Election (chap. 670, 1907).*]

CHOICE OF CITY OFFICERS WITHOUT DESIGNATION OF PARTY OR PRINCIPLE

SEC. 35—1. 1. The provisions of sections 35—1 to 35—13 inclusive, shall apply to the nomination and election of candidates for city offices in each city adopting the same as provided by law.

2. No designation of any party or principle shall be used for any candidate on any nomination paper, official notice or ballot for any municipal election or preliminary election or nomination for city offices.

NOMINATION PAPERS

SEC. 35—2. A candidate for any such office may be nominated by nomination paper or papers signed by a number of electors of the city, division or district wherein such candidate is to be voted for, equal to not less than two per centum of the total number of votes cast therein for governor at the last preceding general election, and in no case by less than ten electors. Except as herein provided such nomination paper or papers shall conform to the provisions of section 30, statutes of 1898.

TIME OF FILING

SEC. 35—3. Such nomination papers shall be filed in the office of the city clerk of such city at least twenty-two days prior to the holding of the election to fill such office.

TICKET

SEC. 35—4. Except as herein provided, the persons so nominated and none other, shall be placed upon the ticket at the election.

BALLOT: ORDER OF OFFICERS

SEC. 35—5. The offices to be voted for shall be arranged on the ballot in the order in which they are named in the statutes creating such offices.

ORDER OF CANDIDATES

SEC. 35—6. The names of the candidates shall be arranged together under each office in an order to be determined by lot by the city clerk for each office in the presence of the candidates or their representatives, at noon on the day following the last day for filing of nomination papers.

PRELIMINARY ELECTION

SEC. 35—7. If at least twenty days prior to any election for such offices there be filed in the office of the city clerk a petition signed by a number of the electors of such city not less than five per centum of the number of votes cast therein for governor at the last preceding general election, the clerk shall immediately give notice of the holding of a preliminary election on a day seven days prior to the general municipal election, which notice shall be given and the election held and conducted and the results canvassed in the same manner as the general municipal election. The names on the ballot used in such preliminary election shall be arranged as provided in section 35—6.

PETITION FORM

SEC. 35—8. The signatures on such petition need not all be on one paper and each shall be signed and accompanied by the affidavit required herein for a nomination paper and be substantially in the following form:

The undersigned electors of the city of.....request the calling of a preliminary election to be held on (date seven days preceding the general municipal election), for the purpose of determining upon not more than two candidates for each office,

to be voted for at the election to be held on (date); the two receiving the highest number of votes for each office at such preliminary election to be such candidates.

PUBLICATION OF RESULTS

SEC. 35—9. Such canvass shall be completed within twenty-four hours after the closing of the polls, and the results thereof posted on the front door of the office of the city clerk and published with a notice of the general election at least once prior to such election.

GENERAL ELECTION BALLOT: WHAT NAMES ON

SEC. 35—10. The names of two persons receiving the highest number of votes for each office and none others, shall be placed upon the ballot at the general city election, and no vote shall be counted at such general city election except when cast for one of such candidates.

IF NO PRELIMINARY ELECTION

SEC. 35—11. If no such petition for a preliminary election be filed, the clerk shall immediately upon such determination of the order of the names on the ballot, give notice of the general city election, which notice shall be given and the election held and conducted and the results canvassed and certified as provided by law.

FORM FROM SECRETARY OF STATE

SEC. 35—12. The secretary of state shall prepare and furnish to city officials, for their guidance, forms for all nomination papers, petitions, notices, ballots and other blanks required for such elections.

ADOPTION AND TRIAL OF SECTIONS 35—1 TO 35—12 INCLUSIVE

SEC. 35—13. Whenever a petition therefor, signed by a number of the qualified electors equal to more than ten per centum of the number of votes cast therein for governor at

the last general election, shall be presented to the clerk of such city at least thirty days prior to the holding of any regular municipal election, such clerk shall submit the question of the adoption of sections 35—1 to 35—12, inclusive, of the statutes, to the electors at such regular municipal election, and give notice thereof and publish this act in the manner required for the notice of such election. The question submitted shall read: "Shall sections 35—1 to 35—12 of the statutes be adopted?"

YES ☐ NO ☐

The election on such question shall be held and conducted and the returns canvassed in the manner in which elections in such city on other questions are conducted and the returns canvassed. If a majority of the votes cast at such election shall be in favor of the adoption of such sections, all nominations and elections for city offices in such city shall be thereafter made as provided therein. At any time after one year after such election the question as to whether such sections shall continue to be applicable to such city may be upon a similiar petition similarly signed, again submitted in a similar manner to the voters of such city.

APPENDIX B

SUMMARY OF PRESENT PRIMARY ELECTION LAWS

In the following paragraphs, the primary laws of the several states are briefly characterized, and the acts cited by chapter or page. No attempt is made to cover anything more than the fundamental points in the systems under consideration, as, for example, whether the law is optional or mandatory, whether it is state-wide in its operation or local; whether the system of nomination is direct or indirect.[1] Those who desire more detailed information will consult the statutes of the several states, most of which publish their election laws sepa rately.

ALABAMA, 1903, p. 356.
Optional; state-wide; direct.

Primaries conducted partly under legal regulation and partly under party rules.

ARIZONA, 1905, chap. 68.
Mandatory; state-wide; convention system.

Covers city, county, and precinct elections; conducted under general election law; joint primaries; conventions to be held on the same day.

ARKANSAS, 1905, chap. 328.
Optional; rudimentary.

Optional with county central committees; makes primary election a legal election; regular election judges conduct primary; a few penalties provided.

[1] Laws characterized as rudimentary are of the early and incomplete type.

CALIFORNIA, 1901, chap. 198 and amendments; 1903, chap. 44; 1905, chaps. 179, 366; 1907, chaps. 340, 352.
Mandatory in cities over 7,500; elsewhere optional with voters; convention system.

System of party registration provided; party committees may add to legal requirements; primaries conducted under general election law; joint primaries; Australian ballot.

COLORADO, 1887, p. 347.
Mandatory; state-wide; rudimentary.

Provides penalties for certain types of fraud and corruption.

CONNECTICUT, 1905, chap. 273; 1907, special acts, chap. 321.
Rudimentary general law; special act for Manchester.

Provision for party registration; 25 per cent. of electors at caucus may demand ballot; fraudulent voting prohibited. Optional direct primary law for Manchester.

DELAWARE, 1897, chap. 393; 1903, chap. 285.
Mandatory; local; direct or indirect.

Choice of delegates to state conventions excluded; applies to Newcastle County; primary conducted largely under election law; expense a public charge; no two parties may hold primaries on the same day; direct nomination optional.

FLORIDA, 1903, chap. 5014; 1905, chap. 100; 1907, chap. 5613.
Optional; state-wide; direct or indirect.

Applies to state, congressional district, county, and cities; primary conducted under regular election law; qualifications for suffrage, judges, canvass, and expense party matters; all primary elections of a party on same day; optional direct primary or convention; majority nominations, second primary; party officers directly elected.

GEORGIA, acts of 1890–91, p. 210; 1900, p. 40; 1904, p. 97.
Rudimentary.

Conducted chiefly under party rules with few safeguards as to vote, fair count and bribery.

IDAHO, 1903, p. 360.
Mandatory; state-wide; rudimentary.

Provides few regulations only; expense a party charge; joint primaries forbidden.

ILLINOIS, 1908.
Mandatory; state-wide; direct.

Conducted under general election law; time of primary fixed; joint primaries; applies to all officers except presidential electors, trustees of the State University, township, and school electors; advisory vote on U. S. senator.

Names placed on ballot by petition of 10 to 2,000 electors; signatures for state office not less than 1,000 or more than 2,000; names arranged in order of filing; plurality nominations; state platform framed by delegates chosen by county central committee. Party officers chosen by direct vote.

INDIANA, 1907, chap. 282.
Partly mandatory, partly optional; local; direct.

Mandatory in counties having city of 36,000; covers only county, city, and township offices; optional elsewhere, both parties concurring; conducted under general election laws; joint primaries; Australian ballot; applies to 10 per cent. parties, in county, city, and township elections; direct nominations; names placed on ballot by petition of 25 or more voters; rotary arrangement; plurality nomination; precinct committeemen chosen by direct vote.

IOWA, 1907, chap. 51.
Mandatory; state-wide; direct.

Conducted under general election law; time of primary fixed; Australian ballot; applies to all offices filled by direct vote of the voters of the state at the general November election, except judge of superior, district, and circuit courts; includes U. S. senator, congressman, presidential elector.

System of party registration provided, subject to change of registration within ten days of primary; names placed on ballot by petition of 1 per cent. to 2 per cent.; alphabetical arrangement; plurality nominations, provided leading candidate receive 35 per cent. of the party vote cast; if not, choice is made by a convention composed of delegates selected at the primary: in case of offices in city or ward, plurality nominates. Platform framed by state convention composed of delegates chosen by county conventions.

In cities of first class and cities of 15,000 under special charter nominations are made by plurality vote, except that where the commission plan of city government is adopted a non-partisan primary is held (Acts of 1907, chap. 48).

Precinct committeemen chosen by direct vote.

KANSAS, 1908, chap. 54.

Mandatory; state-wide; direct.

Applies to all elections except special elections, annual or special school district meetings, and elections in cities of less than 5,000; advisory vote on U. S. senator.[1]

Primaries conducted under general election law; primary date fixed; joint primaries; names placed on ballot by petition of 1 to 10 per cent. of electors; alphabetical order; plurality nominations; platform framed by "party council" composed of candidates for state office, U. S. Senate, and House, state

[1]But must receive "highest number of votes of his party in the greatest number of representative and senatorial districts of the state."

senate and house, the national committeeman, hold over U. S. and state senators, and chairmen of county committees.

Party officers chosen by direct vote.

KENTUCKY, 1892, chap. 65.
Optional; state-wide; direct.

Conducted partly under general election law, and partly under party regulations; party registration provided; expense a party charge; direct primary; plurality nominations.

LOUISIANA, 1906, chap. 49.
Mandatory; state-wide; direct.

Applies to 10 per cent. parties, and all offices, including U. S. Senator; includes special elections; governed by regular election laws, but party committees fix date, prescribe qualifications of electors; secret ballot in cities over 50,000; expense falls partly on public, partly on candidates; fee of $250 required of more important offices; returned if 10 per cent. of vote polled; other candidates assessed by committee; alphabetical order; majority nominations, second primary in case of failure to choose. Party officers chosen by direct vote.

MAINE, 1903, chap. 214; 1905, chap. 149.
Rudimentary; local law.

Mandatory law applicable to towns of not less than 2,000, or cities of not more than 35,000, or cities having special law; provides for party enrolment; notice; ballot; check lists optional; incomplete law; special law for Bangor (1901, chap. 497 and amendments).

MARYLAND, 1906, chap. 407.
Mandatory; state-wide; optional delegate or direct.

Does not include selection of delegates to national, state, or legislative district conventions; conducted under general

election law; joint primaries; Australian ballot; fee of $5 to $25; alphabetical order; direct choice optional; special law for Baltimore (1906, chaps. 182 and 286); system of party registration provided.

MASSACHUSETTS, Codification of 1907, chap. 560 of Acts of 1907; 1908, chap. 345.

Partly mandatory, partly optional; partly state-wide; partly local; partly delegate; partly direct.

Mandatory, state-wide law, provides for a few fundamental guaranties of the primary (secs. 94–107); notice; ballot.

Law optional with cities and towns as determined in special party caucus (sec. 113); contains provision for other protection, including the Australian ballot; joint caucuses are held "in Boston and in cities, and in towns using official ballots, which vote that primaries shall be held therein;" various special provisions for Boston.

Direct primary mandatory for representative in Congress in the ninth, tenth, and eleventh districts, councilor in districts composed wholly of Suffolk senatorial districts, senator in Suffolk, first Worcester, first Hampden, and third Middlesex districts, representatives in the General Court and for elective city officers to be voted for in two or more wards, except school committee in Boston; optional in towns; party enrolment provided.

State committeemen elected by direct vote in Suffolk, first Worcester, first Hampden, and third Middlesex districts.

MICHIGAN, 1907, ex. sess., chap. 4.

Mandatory; state-wide; partly direct; partly delegate.

Primaries conducted as regular election; joint primaries; Australian ballot; party registration provided; direct primary for governor and lieutenant-governor optional with parties; but if no candidate receives 40 per cent. of vote, choice made

by convention; direct primary optional with parties, in cities, counties, legislative, and congressional districts; names placed on ballot by petition of 2 to 4 per cent.; alternate arrangement of names; plurality nominations. Alpena, Kent, Muskegon, and Wayne counties under special acts.

MINNESOTA, 1901, chap. 216; 1902, chaps. 6, 7; 1903, chap. 90; 1905, chap. 92.

Mandatory; state-wide; for local offices, direct.

Rudimentary provisions for nomination of state officers; direct nomination for all except state offices and offices in towns, villages, and cities of the fourth class, members of school, park, and library boards in cities having less than 100,000; under general election law; joint primaries on registration day; Australian ballot; names placed on ballot on payment of fee, $10 to $20; rotation of names where two or more persons are to be elected to same office; plurality nomination.

MISSISSIPPI, 1902, chap. 66, and minor amendments.

Mandatory; state-wide; direct.

Includes practically all offices; conducted largely under party rules; majority nomination, with second primary as alternative; party officers chosen by direct vote.

MISSOURI, 1907, p. 263.

Mandatory; state-wide; direct.

Conducted under general election laws; primary date fixed; joint primaries; Australian ballot; applies to all elective offices except county superintendents (sec. 10) of schools, city officers, not chosen at general election, town, village, and school district officers. Includes U. S. senator; U. S. senator nominated at general election; majority party in legislature to choose highest candidate of its party. Presidential electors,

delegates to national conventions, and national committeemen may be chosen by convention, which may also make declaration of party principles with reference to national questions. Names placed on ballot by petition of 1 to 3 per cent.; maximum of 10 per cent. fixed; alphabetical order; plurality nominations; platform framed by state committee with party nominees for state office, Congress and state legislature. Party officers chosen by direct vote.

MONTANA, 1895. P. C. 1330.
Mandatory; rudimentary.

Incomplete; original type; miscellaneous misdemeanors forbidden.

NEBRASKA, 1907, chap. 52.
Mandatory; state-wide; direct.

Conducted under general election law; covers all offices except in cities under 25,000, village, township, and school district officers, members of school boards; joint primaries on fixed dates; primary day a registration day; delegates to national conventions chosen by conventions.

System of party registration provided; names placed on ballot by petition of 50 to 1,000; not to exceed one-fourth of total in case of county or smaller division; fee of $5 to $50 with some exceptions; alphabetical arrangement, except in counties of over 120,000; plurality nominations; platform framed by convention composed of one delegate from each county, chosen by county committee. Party referendum to determine party position on constitutional amendments.

NEVADA, 1883, chap. 18.
Mandatory; rudimentary.

Incomplete; original type; provision for notice; ballot; miscellaneous misdemeanors forbidden.

NEW HAMPSHIRE, 1905, chap. 95; 1907, chap. 105.
Partly mandatory, partly optional; rudimentary.

Mandatory law for cities of 12,000 and towns of 4,500; optional in other cities and towns; contains few provisions regarding notice, vote by ballot; general act of 1907 makes a few provisions regarding delegates in conventions.

NEW JERSEY, 1898, chap. 139 and subsequent amendments.
Mandatory; state-wide; partly direct and partly indirect.

Primaries conducted under general election law; Australian ballot; joint primaries; system of party registration provided; primaries held on first registration day; names of candidates printed with groups of delegates; candidates for legislature, county offices, and mayor and for officers chosen by electors of a single ward or township, except where such district constitutes an assembly district, chosen by direct primary; advisory vote for U. S. senator; direct election of county or municipal committeemen optional with parties.

NEW YORK, Act of 1898, chap. 179, as amended each succeeding year.
Mandatory; partly state-wide, partly local; direct features optional.

Applies to cities and villages of 5,000 or more, and conventions in and for any political subdivision of the state, made up wholly or in part of delegates elected in any such cities or villages, but optional in cities of the third class.

System of party registration provided; primaries conducted under general election law; fixed date; Australian ballot; rules governing convention provided; direct primary optional with party committee; members of committee chosen directly.

For primaries outside cities, only few provisions; ballot may be required by party rule, or by vote of those present at caucus; also town enrolment act optional with counties.

NORTH CAROLINA, 1907 (numerous special acts).
Mandatory and optional; local; rudimentary.

Mandatory in 18 counties (see chaps. 116, 190, 247, 399, 405, 761, 926); optional in Camden County: primaries conducted chiefly under party rules with some regulations; provision for party registration; in Scotland County, direct plurality nomination, unless next highest requests second primary.

NORTH DAKOTA, 1907, chap. 109.
Mandatory; state-wide; direct.

Conducted under general election laws; applies to members of Congress, state officers, county officers, district assessors, Supreme and District Court judges, members of legislature, county commissioners, and U. S. senator; nomination of presidential election or delegates to national convention omitted; primary date fixed; joint primaries; Australian ballot.

Names placed on ballot by petition of 3 to 5 per cent., not exceeding 300 names for state and 200 for local office; and fee of $1 to 1 per cent. of salary; candidates for legislature must pledge support to party candidate for Senator receiving highest vote in primary, if this equals 40 per cent. of total vote; if not, then to vote for highest party candidate at general election; no petition to be circulated more than 90 days before filing time; names in rotation; plurality nomination, but if all candidates combined fail to receive 30 per cent. the vote cast for secretary of state at last general election, no nomination; platform framed by state central committee; precinct committeemen chosen by direct vote.

OHIO, 1908.
Mandatory; state-wide; delegate and direct; direct in counties and cities. Advisory vote on U. S. Senator.

Primaries conducted in the main under general election

law; Australian ballot; joint primaries on fixed date; party committees chosen by direct vote.

OKLAHOMA, 1908.
Mandatory; state-wide; direct.

Includes all offices, except presidential electors and delegates to national convention in 1908; primaries conducted under regular election; primary date fixed; joint primaries; names placed on ballot by petition signed by 50 to 1,000 names; plurality nominations; platform framed by delegates chosen in primary; party officers chosen by direct vote; corrupt practices act a part of law.

OREGON, 1904 (initiative petition and referendum).
Mandatory; state-wide; direct.

Applies to all elections except presidential elections, except in cities and towns of less than 2,000; school elections; includes U. S. senator.

Primaries conducted under general election laws; joint primaries; Australian ballot; system of party registration provided; names placed on ballot by petition of 2 per cent., not to exceed 1,000 for state or congressional office or 500 in other cases; alphabetical order; plurality nominations; 100-word platform may be filed and 12 words printed on ballot; candidates for legislature may pledge themselves to follow popular vote on senator; party officers chosen by direct vote.

PENNSYLVANIA, 1906, chap. 10; 1907, chap. 160.
Mandatory; state-wide; direct, except for state offices.

Applies to all offices except those chosen at state and national conventions; primaries conducted as general election; primaries held on same day and together; Australian ballot. Direct vote for all but state officers, delegates at large to national conventions, presidential electors,[1] and borough or

[1] Method of choosing presidential electors optional with parties.

township offices. Names of candidates placed on ballot by petition of 10 to 200 electors; alphabetical order; plurality nominations; party officers chosen by direct vote.

RHODE ISLAND, 1902, chap. 1078.
Mandatory; local; direct or indirect.

Applies to Providence, Newport, and Pawtucket; notice required; ballot (not Australian); provision for canvass and recount; no two political parties caucus on same day; direct or delegate system optional; party committees chosen by direct vote.

SOUTH CAROLINA, Act of 1888, chap. 9; amended in 1896, chap. 25; 1900, chap. 211; 1903, chap. 73; 1905, chap. 409.
Mandatory; state-wide; rudimentary.

General law providing few regulations regarding oath of election officers, ballot, fair count, etc. In the main, conducted by party rules; in counties having city of 40,000 and 20,000 special regulations, chiefly regarding party registration.

SOUTH DAKOTA, 1907, chap. 139.
Mandatory; state-wide; direct.

Includes all offices, but is optional in municipal, town, township, and school district elections; includes U. S. senator and national committeemen.

Conducted under general election laws; primary date fixed; joint primaries; names placed on ballot by petition of 1 to 5 per cent.; fee $1 to $50; plurality nominations, provided highest candidate receives 30 per cent. of vote cast; otherwise delegates, chosen in primaries, select candidate from those voted upon at primary. Platform framed by delegates to state convention with candidates for state office and state central committee. National delegates chosen by delegate method,

and by two-thirds vote of county central committee, appointment of delegates may be made by committee. Party officers chosen by direct vote.

TENNESSEE, 1901, chap. 39, amended 1903, chap. 241; 1905, chap. 353.

Optional; state-wide; direct.

Optional; partly under general law, partly under party regulations; direct nomination; plurality or majority nomination optional with party committee; special act for Davidson County similar in character (1907, chap. 422).

TEXAS, 1907, chap. 177.

Mandatory; state-wide; direct.

Mandatory for parties polling 100,000 votes; optional with those 10,000 to 100,000; conducted partly under state law and partly under party rules; same day fixed for both primaries, but separate primaries; direct primary; names placed on ballot by request which may be accompanied by petition of 25 voters; plurality nominations for state office, but convention held to ratify result; plurality or majority for local office; platform by convention, but no demand for specific legislation on any subject, "unless the demand for such specific legislation shall have been submitted to a direct vote of the people, and shall have been indorsed by a majority vote of all the voters cast in the primary election of such party." "The State Executive Committee shall on petition of 10 per cent. of the voters of any party, as shown by the last primary election vote, submit any such question or questions to the voters at the general primary next preceding the state convention." Committeemen elected by direct vote.

UTAH, 1901, chap. 72.

Mandatory; rudimentary.

Fraudulent voting in primaries forbidden.

VERMONT, 1904, chap. 2; 1906, chap. 1.
Mandatory; rudimentary.

Contains few provisions regarding conduct of primaries on petition of 5 per cent. of vote for governor; towns may have check-list and ballot in caucuses; party registration provided; all caucuses of any part of district to be held on same day; bribery prohibited.

VIRGINIA, Code of 1904 (sec. 1220).
Optional; rudimentary.

Legalizes primaries under party rules.

WASHINGTON, 1907, chap. 209.
Mandatory; state-wide; direct.

Applies to all candidates for elective offices, except in cities and towns of fourth class, school, dike, irrigation, or other local improvement districts, and presidential electors; special elections excepted; includes U. S. senator; conducted under general election laws; primary date fixed; joint primaries; Australian ballot; candidates for judge of Supreme and Superior courts appear on both tickets, and "the number of candidates, equaling the number of judicial positions to be filled, who receive the highest number of votes at the primary election, shall be candidates for such respective offices."

Names placed on ballot by declaration of candidate and fee of $10 if salary under $1,000 and 1 per cent. of salary in excess of $1,000; names on ballot in order of declaration of candidacy; plurality nomination; where four or more candidates for state or congressional position, highest candidate must receive 40 per cent. of vote cast; otherwise second choices (which are required where there are four candidates for such office) are computed, and the candidate receiving highest num-

ber of first and second choices is the nominee. Committeemen chosen by direct vote.

WEST VIRGINIA, 1891, chap. 67.
Optional; rudimentary.

Provides for notice and penalties.

WISCONSIN, 1903, chap. 451 (adopted by referendum vote 1904), and amendments. See laws of 1907, pp. 2 ff.
Mandatory; state-wide; direct.

Conducted under general election laws; primary date fixed; joint primaries; Australian ballot; primary on registration day, except in cities of first class.

Applies to all elective offices except state superintendent, presidential electors, county and district superintendents of schools, town, village, and school district officers, and judicial officers excepting police justice and justices of the peace in cities of the first, second, and third classes; no primary election in cities of the fourth class except upon petition of 25 per cent. of electors. Cities may adopt system providing for nomination by petition only; but on petition of 5 per cent. of electors, twenty days before election, a preliminary election must be held, seven days prior to regular election; two persons receiving highest number of votes for each office qualify for final election.

Includes U. S. senator, and delegates to national convention; presidential electors named by convention.

Names placed on ballot by petition of 1 to 3 per cent., maximum of 10 per cent.; no nomination papers circulated more than sixty days before primary; alphabetical order; plurality nominations; no test of party allegiance; platform framed by a convention composed of candidates for state office and legislature, with hold-over members of senate. Municipal party officers chosen by direct vote; state committeemen by state convention.

WYOMING, 1890, chap. 80; 1907, chap. 100.
Rudimentary; optional.

Incomplete; original type; provision for notice; ballot; miscellaneous misdemeanors.

APPENDIX C

BIBLIOGRAPHY

A bibliography on direct nomination was issued by the Library of Congress in 1905 under the title of *List of References on Primary Elections, Particularly Direct Primaries*, compiled by A. P. C. Griffin. The New York State Library also issued a bibliography on direct nominations in 1906 (*Legislative Bulletin*, 30 *b*). Briefer lists are found in Dallinger's *Nominations for Elective Office*, Appendix A, and Meyer's *Wahlamt und Vorwahl*, Literaturverzeichnis, XXIV. The Library of Congress has also issued (1907) a *List of Works relating to Political Parties in the United States*, compiled by A. P. C. Griffin. This contains material of importance on this subject.

The primary sources of information on this topic are the session laws of the states and the reports of the cases decided. Most states publish their election laws in a separate print. Unfortunately the debates in the several state legislatures, at the time of the passage of the several laws, are reported only in an imperfect way by the local newspapers. The daily and periodical literature is full of comment on the nominating system, and the observations of such journals as the *Outlook*, the *Nation* and the *Review of Reviews* are of special value. No attempt has been made to cite any of these articles here, except those contained in the more strictly technical periodicals. A number of popular articles are cited in the bibliographies by the Library of Congress, the New York State Library, Dallinger, and Meyer.

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De France *v.* Harmer, 92 *N. W. Rep.*, 159 (1902).
Commonwealth *v.* Rogers, 63 *N. E. Rep.*, 421; 181 *Mass.*, 184 (1902).
Young *v.* Beckham, 72 *S. W. Rep.*, 1092; 24 *Ky. L. R.*, 2135 (1903).
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State *v.* Abbay, 35 *So. Rep.*, 153 (1903).
Montgomery *v.* Chelf, 118 *Ky.*, 766; 82 *S. W.*, 388 (1904)
Hopper *v.* Stack, 69 *N. J. L.*, 569, 56 *A.*, 1 (1903).
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State *v.* Michel, 48 *So. Rep.*, 430, 121 *La.* (1908).

APPENDIX E

LIST OF PRIMARY LAWS

Reference is to chapter of session law unless otherwise specified.

1866.—California, 359; New York, 11, 783.

1871.—Ohio, p. 27; Pennsylvania, p. 100.

1872.—Ohio, p. 196; Pennsylvania, 70, 87, 830.

1873.—Nevada, 121.

1874.—California, p. 74; Ohio, pp. 104, 113; Pennsylvania, 29.

1875.—Missouri, p. 54.

1877.—Indiana, 51; Ohio, pp. 163, 283.

1878.—New Jersey, 113, 204.

1879.—Ohio, p. 75; Pennsylvania, 86.

1880.—Ohio R. S., secs. 2916–21; 7039–44; Kentucky, 11, 1018.

1881.—Pennsylvania, 77, 148.

1882.—Kentucky, 336; Maryland, 290; New York, 154, 366.

1883.—Colorado, p. 187; Connecticut, 123; Nevada, 18; New Jersey, 134; New York, 380; Pennsylvania, 85.

1884.—Maryland, 190; New Jersey, 211.

1885.—Alabama, local, p. 480; Colorado, p. 200; Dakota, 28; Illinois, p. 187; Ohio, p. 224.

1886.—Kentucky, 11, local, pp. 176, 354; Maryland, p. 502; Ohio, p. 190.

1887.—Arizona, Rev. Stat., p. 312; Colorado, p. 347; Delaware, 21; Georgia, p. 42; Maine, 58; Michigan, 303; Minnesota, 4; Nebraska, 11; New York, 265; Ohio, p. 188.

1888.—Kentucky, Private, II, 689; III, 1266; Maryland, 1181, 299; Massachusetts, 441; Ohio, p. 337; South Carolina, 9.

1889.—Alabama, 126; Illinois, p. 140; Indiana, 130; Minnesota, 3; Missouri, p. 111; Nebraska, pp. 199, 294; Ohio, p. 363.

1890.—Kentucky, I, 448, II, 1115, III, 1614; Louisiana, p. 62; Massachusetts, 393; New York, 94, 117; North Dakota, 112; Washington, p. 419.

1891.—Georgia, I, p. 210; Kansas, 115; Missouri, p. 136; Nebraska, p. 175; Oregon, p. 4; West Virginia, 67; Wisconsin, 439.

1892.—Kentucky, 65; Maryland, 238, Local, pp. 261, 508, 548, 616; Massachusetts, 416; Mississippi, 69; New York, I, 680, 693; Virginia, 669.

1893.—Massachusetts, 417; Michigan, 175; Missouri, p. 165; New York, 370; Wisconsin, 7, 249.

1894.—Maryland, 335, 384; Massachusetts, 504; Ohio, 769; Virginia, 354, 727, 741.

1895.—Arkansas, 154; California, 181; Massachusetts, 489, 502, 507; Michigan, 135, Local, 348; Minnesota, 276; Montana, Political Code, sec. 1330; New York, 721; Texas, 34; Washington, 145; Wisconsin, 288.

1896.—Iowa, 68; Massachusetts, 109, 435, 469; New York, 909; Ohio, 193, 377; South Carolina, 24, 25; Virginia, 398, 624.

1897.—Arkansas, 35; California, 106; Delaware, 393; Florida, 62; Maine, 310; Massachusetts, 530; Minnesota, 125, 137; Missouri, p. 117; New Hampshire, 78; New York, 255; Pennsylvania, 148; Washington, Code, sec. 1465; Wisconsin, 312.

1898.—Illinois, p. 11 (ex. sess.); Iowa, 111; Louisiana, 279; Massachusetts, 191, 379, 435, 472, 548; New Jersey, 139; New York, 179, 197; Ohio, 652; Utah, 50; Virginia, 27, 59.

1899.—California, 32, 46, 52, 120 (35, p. 301); Illinois, p. 211;

Massachusetts, 190, 329, 346; Michigan, 22, 198; Minnesota, 349; Nebraska, 27; New York, I, 266, II, 473, 530; North Dakota, 38; Rhode Island, 662, 709; Tennessee, 407; Utah, 79; Wisconsin, 341.

1900.—California, 35; Georgia, 40; Louisiana, 133; Maryland, 366, 614; Massachusetts, 120; New York, 202, 204, 225, 506; South Carolina, 211; Virginia, 124, 441, 867, 897.

1901.—Arizona, R. S., Title XX, 15; California, 46, 187, 198; Colorado, 71; Connecticut, 176; Florida, 130; Illinois; p. 172, 197; Indiana, 219; Kansas, 177; Kentucky, 4; Louisiana, p. 40; Maine, 497; Maryland, chap. 2; Massachusetts, 117, 249, 265, 402, 435; Michigan, 147 Publ.; 292, 470, 471, Local; Minnesota, 216; Missouri, p. 144, 149, 165; Montana, p. 115; New Hampshire, 105; New York, I, 167, II, 360; North Carolina, 524, 752, 768; North Dakota, 47, 48; Oregon, p. 317, 400; Rhode Island, 867; Tennessee, 12, 39; Utah, 72.

1902.—Maryland, 296, 523; Massachusetts, 225, 492, 506, 529, 537; Minnesota, 6, 7; Mississippi, 66; New Jersey, 150; New York, 195; Rhode Island, 1078; South Carolina, 375; Virginia, 466.

1903.—Alabama, 356; California, 44, 106; Delaware, 285, 286; Florida, 143, 144; Idaho, p. 360; Illinois, p. 176; Maine, 214, 354; Massachusetts, 426, 450, 453, 425; Michigan, Local 292, 326, 502; Minnesota, 90; Missouri, 193; Nebraska, 40; New Hampshire, 40; New Jersey, 248; New York, III, 595; North Carolina, 123, 793; Oklahoma, 13; Rhode Island, 1059, 1078; South Carolina, 8, 731; Tennessee, 241; Texas, p. 148; Wisconsin, 382, 451.

1904.—Georgia, 97; Iowa, 40; Louisiana, 115; Maryland, 266, 508, 678, 682; Massachusetts, 41, 179, 201, 293,

377; Mississippi, 129; New Jersey, 241; New York, 350, 488; Ohio, p. 107, 439; Oregon, p. 48; South Carolina, 231; Wisconsin, 451; Vermont, 2; Virginia Code, sec. 1220.

1905.—Arkansas, 328; Arizona, 68; California, 41, 179, 366, 473; Connecticut, 273, 280; Florida, 100; Georgia, pp. 49, 98; Illinois, 211; Indiana 73; Maine, 149, 295; Massachusetts, 386, 397; Michigan, 81, Local, 336, 340, 341, 345, 476, 577, 620; Minnesota, 92; Montana, 91, 99; Nebraska, 66; New Hampshire, 93, 112; New Jersey, 1, 117; New Mexico, 127; New York, 207, 674; North Dakota, 109; Ohio, p. 107, 439; Oklahoma, 17; Oregon, 1; South Carolina, 409, 473; South Dakota, 107; Tennessee, 353; Texas, 543; Wisconsin, 3, 79, 359, 369, 424.

1906.—Illinois, p. 436; Iowa, 45, 46; Louisiana, 49; Maryland, 182, 286, 407, 724, 813; Massachusetts, 444; New Jersey, 235, 236, 237, 296; New York, 227, 466; Pennsylvania, 10; Texas, 3, 177; Vermont, 1; Wisconsin, 2, 4, 5.

1907.—California, 19, 230, 351, 352; Connecticut, 240; Florida, 18; Georgia, p. 111; Illinois, p. 90; Indiana, 282; Iowa, 48, 51, 292; Louisiana, 16, 21, 27; Maine, 98, 142, 407; Massachusetts, 334, 543, 560; Michigan, Local, 353, 362, 370, 436, 440, 459, 483, 601, 693, 712, 728, 740, 752, 754; Minnesota, 226, 429; Missouri, 262, 263; Montana, 55; Nebraska, 52; New Hampshire, 52, 105, 145; New Jersey, 2, 179, 278, 281; New York, 296, 504, 744; North Carolina, 116, 190, 247, 374, 399, 405, 761, 926, Private 326; North Dakota, 109; Pennsylvania, 160; South Dakota, 139, 140; Tennessee, 402, 422; Texas, 177; Vermont, 1, 2; Washington, 209; Wisconsin, 512, 538, 666; Wyoming, 100.

1908.—Illinois, —; Kansas, 54; Massachusetts, 423, 425, 428; Michigan (ex.sess.), 4; Mississippi, 136; New York, 121, 208, 310; Oklahoma, —; Ohio,—.

CONSTITUTIONAL PROVISIONS:

Mississippi, 1890, Art. 12.
Louisiana, 1898 Art. 200.
California, 1900, Art. 2.
Alabama, 1902, Art. 8.
Virginia, 1902, Art. 2.
Oklahoma, 1907, Art. 3.

INDEX

INDEX

Abuses, under convention system, 4 ff.
Affiliation:
  test of, 6, 23, 36 ff., 108 ff., 143 ff.
  abolition of test, 147 ff.
Alabama, reference to laws of, 22, 48
  summary of, 273
American Political Science Association, 49
Ames, Dr., 121
Anderson, Frank A., 130
Arizona, summary of laws of, 273
Arkansas, summary of laws of, 273

Ballot:
  Australian, effect on primary election reform, 28 ff.
  decisions regarding, 97
  fraudulent count of, 7
  order of names on, 76, 142
  regulations regarding, 21, 23, 35, 53
  return to early form of, 171 ff.
Bibliography of primary election, 288
Bransson, Walter T., cited, 49
Britton *v.* Board of Election Commissioners, 61 *Pac. Rep.*, 1115, 104, 109

California, reference to laws of, 9, 15, 32, 33, 37, 40, 43, 44, 48, 147
  summary of, 274
Call of primary, 7, 10
Candidate, type of, in direct primary, 121
Capen *v.* Foster, 12 *Pickering*, 485, 93
Cases, leading, on primary laws, list of, 296
Cincinnati, City of, *v.* Ehrmann, 6 *Ohio N. P.*, 169, 106
Colorado, reference to laws of, 19, 20, 23, 61, 65, 94
  summary of, 274
Committees, regulation of, 42, 64, 161
Commonwealth *v.* Rogers, 63 *N. E. Rep.*, 421, 103
Commonwealth *v.* Wells, 101 *Pa. State*, 463, 92, 108
Connecticut, reference to laws of, 19
  summary of, 274
Convention, regulation of procedure, 43, 59
Cost of candidacy in direct primary, 119, 129

Dallinger, Frederick W., cited, 49, 129
Dapper *v.* Smith, 101 *N. W.*, 60, 112
Date, of holding primary: determination of, 39 ff., 52
  uniformity of, 41
  most desirable, 137 ff.
Delaware, reference to laws of, 22, 23, 33, 34, 45
  summary of, 274
Delegates, instruction of, 61 ff.
Discrimination between parties, 104 ff.
Districts, regulation of primary, 44, 57.

Eaton, Dorman B., cited, 18
Expenses of primary, 24, 35

Federalist, cited, 168
Fee, 74, 112 ff., 141
Fisher, Walter, cited, 165
Florida, reference to laws of, 78, 146, 255 ff.
summary of, 274; reprint, 255
Ford, H. J., cited, 129

Georgia, reference to laws of, 32, 34
summary of, 275
Ginter *v.* Scott, 8 *Pa. Dist. Rep.*, 536, 111

Hopper *v.* Stack, 56 *Atl. Rep.*, 1, 100
House Bill No. 203 *In re*, 9 *Col.*, 631, 94

Idaho, summary of law of, 275
Illinois, reference to laws of, 20, 21, 24, 31, 33, 44, 51, 54, 55, 60, 61, 63, 64, 71, 77, 145, 179 ff.
summary of, 275; reprint, 179
Indiana, reference to laws of, 19, 45, 54, 76, 85
summary of, 275
Iowa, reference to laws of, 32, 45, 60, 62, 63, 79, 81, 87, 265 ff.
summary of, 275, 276; reprint, 265

Johnston *v.* Grand Forks Co., 113 *N. W. Rep.*, 1071, 113
Judson, Harry Pratt, cited, 131

Kansas, reference to laws of, 31, 45, 80, 151
summary of, 276
Kenneweg *v.* Alleghany Co. Commissioners, 62 *Atl. Rep.*, 250, 103, 114
Kentucky, reference to laws of, 28, 31, 34, 35, 38, 44
summary of, 277

Ladd *v.* Holmes, 66 *Pac. Rep.*, 714, 100
La Follette, Robert M., cited, 79
Lawton, G. W., cited, 18
Leonard *v.* Commonwealth, 112 *Pa.*, 607, 94
London, County Council, 170
Louisiana, reference to laws of, 32, 51, 54, 57, 65, 146
summary of, 277

Macmillan, D. C., cited, 18
Macy, Jesse, cited, 49, 129
Maine, reference to laws of, 19
summary of, 277
Majority nomination, 77, 121, 153
Marsh *v.* Hanley, 43 *Pac. Rep.*, 975, 106
Maryland, reference to laws of, 20, 21, 22, 23, 24, 32, 33, 35, 53
summary of, 277, 278
Massachusetts, reference to laws of, 20, 31, 32, 33, 37, 40, 41, 42, 43, 45, 65
summary of, 278
McInnis *v.* Thames, 80 *Miss.*, 617, 98
Merit system, relation to direct primaries, 172 ff.
Meyer, E. C., cited, 49, 130
Michigan Political Science Association, *Proceedings* of, cited, 49
Michigan, reference to laws of, 19, 32, 34, 37, 40, 43, 50, 55, 56, 71, 76, 78, 86, 144
summary of, 278, 279

Minnesota, reference to laws of, 37, 43, 51, 53, 70, 148
summary of, 279
Mississippi, reference to laws of, 34, 35, 40, 41, 42, 44, 51, 64, 70, 75, 145
summary of, 279
Missouri, reference to laws of, 14, 19, 32, 33, 35, 61, 80, 144, 151
summary of, 279, 280
Montana, reference to laws of, 32, 50, 53, 59
summary of, 280
Montgomery v. Chelf, 825 *W. Rep.*, 388, 115
Municipal Voter's League, 49

National Municipal League, 48
National officers, 83, 158 ff.
Natural rights of parties, 99 ff.
Nebraska, reference to laws of, 19, 71, 80, 82
summary of, 280
Nevada, reference to laws of, 16, 22
summary of, 280
New Hampshire, reference to laws of,
summary, 280, 281
New Jersey, reference to laws of, 16, 19, 53, 59, 144
summary of, 281
New York, reference to laws of, 11, 21, 22, 24, 31, 32, 33, 38, 39, 40, 42, 44, 53, 61, 99, 228 ff.
summary of, 281; reprint, 228
Non-p rtisan primary, 87, 132
North Carolina, reference to laws of, 45
summary of, 281, 282
North Dakota, reference to laws of, 32, 43, 53, 61, 65, 71, 77, 80, 151
summary of, 282
Number of candidates, 120

Ohio, reference to laws of, 13, 19, 24, 33, 40, 45
summary of, 282, 283
Oklahoma, reference to laws of, 48, 50
summary of, 283
Optional laws, 10
Oregon, reference to laws of, 32, 51, 76, 81, 83, 84, 148, 151
summary of, 283
Organization of party, how affected by direct primary, 125
Ostrogorski, cited, 49

Pennsylvania, reference to laws of, 13, 14, 19, 51, 53, 55, 83, 144
summary of, 283, 284
People *v.* Board of Election Commissioners of Chicago, 77 *N. E. Rep.*, 321, 107, 108, 113
People *v.* Democratic Committee, 164 *N. Y.*, 335, 99
Petition, nomination by, 85
size of, 140
comparison of petition system with direct primary system, 164 ff.
Platform, 79, 150 ff.
Plurality nomination, 78, 156
Police power, primary law sustained as exercise of, 101
Preferential vote, 79, 155
Press, influence of in direct primary, 127 ff.
Primary election laws, list of, 298 ff.

Referendum, direct primary as, 131

Registration, party, 38, 146
Reprints of laws of Illinois, New York, Florida, Wyoming, Iowa, Wisconsin, 179 ff.
Rhode Island, reference to laws, of 86, 145
summary of, 284
Rouse *v.* Thompson, 81 *N. E. Rep.*, 1109, 101

Shiel *v.* Cook Co., 27 *N. E. Rep.*, 293, 96
Size of vote in primaries, 117
Slates, pre-primary, 123 ff.
South, primary laws in, 34, 57, 72
South Carolina, reference to laws of, 19, 22, 45
summary of, 284
South Dakota, reference to laws of, 71, 78, 144
summary of, 284
Special legislation, regarding primaries, 106
Spier *v.* Baker, 52 *Pac. Rep.* 659, 109
State *v.* Drexel, 105, *N. W. Rep.*, 174, 105, 113
State *v.* Jensen, 86 *Minn.*, 19, 105
State *v.* Michel, 48 *So. Rep.*, 436, 102
State *v.* Scott, 108 *N. W. Rep.*, 828, 114
Stickney, Albert, cited, 18
Summary of primary laws of all states, 273

Tennessee, reference to laws of, 45
summary of, 285
Texas, reference to laws of, 32, 54, 57, 60, 61, 71, 75, 78, 82, 151
summary of, 285

Union League Club, 13
United Cities Conference, 49
Utah, reference to laws of, 50
summary of, 285

Vermont, reference to laws of, 54
summary of, 286
Virginia, reference to laws of, 45, 48
summary of, 286

Washington, reference to laws of, 31, 32, 77, 79, 86, 88
summary of, 286
West Virginia, reference to laws of, 31, 36
summary of, 287; reprint, 269
Whitten, Robert H., cited, 131
Wisconsin, reference to laws of 32, 41, 42, 43, 51, 53, 55, 64, 79, 80, 83, 87, 148, 150, 152, 169 ff.
summary of, 287; reprint, 269
Woodburn, J. A., cited, 49
Woodruff *v.* State, 52 *Atl. Rep.*, 296, 108
Wyoming, reference to laws of, 31, 262 ff.
summary of, 288; reprint, 262

Young *v.* Beckham, 72 *S. W. Rep.*, 1092, 112

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